

IN THE UNITED STATES DISTRICT FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC.,

Plaintiffs,

vs.

GAB ROBINS NORTH AMERICA, INC.,  
et al.,

Defendants.

2007 MAR 13 A 10:31  
DEBRA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO.

IN THE CIRCUIT OF PIKE COUNTY,  
ALABAMA

CIVIL ACTION NO.: 2006-246-RWB

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant RSUI GROUP, INC., whose correct name is RSUI INDEMNITY COMPANY (hereinafter "RSUI"), hereby gives notice of removal of this action from the Circuit Court of Pike County, Alabama to the United States District Court for the Middle District of Alabama. As grounds for removal of the action, Defendant states as follows:

1. On or about September 22, 2006, Plaintiffs Donnie and Metra Hughes, d/b/a Historical Rentals, Inc., commenced an action in the Circuit of Pike County, Alabama entitled *Donnie and Metra Hughes, d/b/a Historical Rentals, Inc. v. GAB Robins North American, Inc., and Troy Rhoades*, civil action CV-06-246. A summons was issued by the Circuit Court of Pike County on or about September 29, 2006.

2. On or about November 6, 2006, Plaintiff filed its First Amended Complaint in the Circuit Court of Pike County, Alabama entitled *Donnie and Metra Hughes, d/b/a Historical Rentals, Inc. v. GAB Robins North American, Inc., and Troy Rhoades, Hilb, Rogal & Hobbs Wholesale Insurance Services, Inc., Kirklin & Co., LLC, a/k/a HRH/Kirklin & Co., LLC and*

*RSUI Group, Inc.* A summons was issued to the newly named Defendants on November 7, 2006.

3. Plaintiff's First Amended Complaint alleges various causes of action, to include breach of contract, false representation, bad faith, and breach of fiduciary duty.

4. Plaintiff's First Amended Complaint alleges that the cost of repair of the insured property in this matter is estimated to exceed \$400,000.00. *See* Plaintiff's First Amended Complaint, ¶ 15. Plaintiff seeks to recover against the Defendants a sum in the amount of the estimated costs of repairs, plus \$500.00 per day for loss of income. *Id.* Plaintiff also seeks unspecified compensatory and punitive damages. It is clear from the face of Plaintiff's First Amended Complaint that the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. In addition, Plaintiff seeks damages for bad faith refusal to pay on insurance contract. "[A] review of Alabama case law reveals that damage awards in bad-faith cases generally exceed the \$75,000.00 jurisdictional minimum." *Choctaw Carriers, Inc. v. AXA Global Risk*, 1999 US Dist. Lexis 5210 (S.D. Ala. 1999)(citing *Employees' Benefit Association v. Grisset*, 732 So.2d 968, 1998 Ala. LEXIS 256, 1998 WL599498 (Ala. 1998)(jury award on bad faith claim of \$150,000.00 in punitive damages); *Liberty National Ins. Co. v. Allen*, 699 So.2d 138 (Ala. 1997)(jury verdict in bad faith in fraud case for \$40,000.00 compensatory damages and \$2.7 million dollars in punitive damages and \$79,589.63 in punitive damages on bad faith claim); *Lowell American Life Insurance Co., Inc. v. Mattiace*, 679 So.2d 229 (Ala. 1996)(jury award of \$32,200.00 on breach of contract claim and \$75,000.00 punitive damages on bad faith claim)). Further, there are no statutory caps of less than \$75,000.00 for the species of punitive damages that Plaintiffs seek to recover. Moreover, punitive damage awards well in excess of the federal jurisdictional amount have been routinely affirmed in Alabama. *See, e.g.*

*Acceptance Ins. Co. v. Brown*, 832 So2d. 1 (Ala. 2001)(Alabama Supreme Court conditionally affirming award to Plaintiff in insurance bad faith case remitted \$60,000.00 in compensatory damages and \$180,000.00 punitive damages); *Chrysler Corp. v. Shiffer*, 736 So.2d 538 (Ala. 1999)(\$150,000.00 punitive award and fraud action involving sale of truck); *USA Petroleum Corp. v. Hines*, 770 So.2d 589 (Ala. 1999)(\$200,000.00 punitive award in an assault case); *Union Security Life Insurance Co. v. Crocker*, 727 So.2d 1 (Ala. 1998)(2 million dollar punitive award in insurance fraud case); *National Ins. Ass'n. v. Sockwell*, 829 So.2d 111 (Ala. 2002)(\$600,000.00 punitive award in insurance bad faith case); *Acceptance Insurance Co. v. Brown* 832 So2d. 1 (Ala. 2001)(\$180,000.00 punitive award affirmed in insurance bad faith case). Hence, this case exceeds the amount in controversy threshold for diversity jurisdiction set out at 28 U.S.C. § 1332 (a). *Williams v. Best Buy Co., Inc.*, 269 F. 3rd 1316 (11<sup>th</sup> Cir. 2001) (amount in controversy, if not stated in complaint, may be established otherwise).

5. Defendant GAB Robins, Inc., first received a copy of the initial pleadings setting forth Plaintiffs' claims for relief when it was served by certified mail with summons and complaint on October 3, 2006. Defendant Troy Rhoades, first received a copy of the initial pleadings setting forth Plaintiffs' claims for relief when he was served by certified mail with the summons and complaint on November 8, 2006. Defendants HRH/Kirklin and Company, LLC, and RSUI first received a copy of Plaintiffs first amended complaint setting forth Plaintiffs claims for relief when they were both served by certified mail with the summons and complaint on November 10, 2006.

6. True and correct copies of all process, pleadings and orders served upon Defendants in said action are attached hereto as Exhibit "A."

7. Pursuant to 28 U.S.C. § 1446 (b):

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or *other paper* from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by a § 1332 of this title more than one year after commensurate of the action.

(emphasis added). In Plaintiffs' First Amended Complaint, it is alleged that Historical Rentals, Inc., is an Alabama Corporation doing business in Pike County, Alabama. Plaintiff alleges that Defendant Troy Rhoades is also an Alabama resident doing business in Pike County, Alabama. Further, Plaintiff alleges that Defendants GAB Robins North America, Inc.; HRH/Kirklin and Company, LLC.; and RSUI are all Delaware Corporations doing business in Alabama. Plaintiffs' original Complaint and First Amended Complaint set forth allegations that Plaintiff is an Alabama Corporation, and Defendant Troy Rhoades is an Alabama resident. Based on these fraudulently pled jurisdictional facts, it appears that the case, as stated by the initial pleadings, is not removable.

8. On or about February 9, 2007, Plaintiff served Defendant RSUI with its unverified responses to RSUI's first interrogatories and request for production. In response to request for production number 8, Plaintiff provided a copy of the driver's licenses for Donnie and Metra Hughes, and a copy of the Articles of Incorporation for Historical Rentals, Inc. *See* Exhibit "B". Based on the documentation provided by Plaintiff to Defendants, Plaintiffs Donnie and Metra Hughes are residents of the State of Florida, and Historical Rentals, Inc., is a company incorporated in the State of Florida with its principal place of business in Florida. Defendant GAB Robins North America, Inc., is a company incorporated and organized under the laws of the State of Delaware, having its principal place of business in the State of Delaware. Therefore,

GAB Robins North America, Inc., is not incorporated in nor does it have its principal place of business in the State of Florida. Defendant Troy Rhoades is an Alabama resident. Therefore, Defendant Troy Rhoades is not a resident of the State of Florida. Defendant HRH/Kirklin and Company, LLC, is a company incorporated and organized under the laws of the State of Delaware, having its principal place of business in the State of Delaware. Therefore, HRH/Kirklin and Company, LLC, is not incorporated in and nor does it have its principal place of business in the State of Florida. Defendant RSUI Indemnity Company is a company incorporated and organized under the laws of the State of Delaware, having its principal place of business in the State of Delaware. Therefore, RSUI, is not incorporated in and nor does it have its principal place of business in the State of Florida. Accordingly, there is complete diversity of the citizenship between the Plaintiffs and each Defendant.

9. Defendants GAB Robins North America, Inc.; Troy Rhoades; HRH/Kirklin and Co., LLC, consent to this removal as noted in the consent to removal form filed herewith.

10. Because there is complete diversity of citizenship between the parties and because the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00, this Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1332.

11. Venue is proper in this District under 28 U.S.C. § 1441 (a) because this district and division embrace the place in which the removed action has been pending.


12. A copy of this Notice of Removal is being served upon all counsel of record.

13. A true and correct copy of this Notice of Removal is being filed with the Circuit Court of Pike County, Alabama.

WHEREFORE, Defendant RSUI files this Notice of Removal so as to effect the removal of this action from the Circuit Court of Pike County, Alabama to this Court. Such Defendant

prays that this Honorable Court will make such other and further orders as may be appropriate to effect the preparation and filing of a record in this cause, so that all proceedings that may have been had in the said circuit court are removed to this court. Such Defendant further prays that the removal of this cause to this Court be effected and that no further or other proceedings shall be had with respect to this cause in the Circuit Court of Pike County, Alabama.

Respectfully submitted,



HELEN JOHNSON ALFORD (ALF002)  
JUAN C. ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St. Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

N.J. Cervera, Esq.  
Matthew Baker, Esq.  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Tom Burgess, Esq.  
BURGESS & HALE, L.L.C.

505 North 20th Street, Suite 300  
Birmingham, AL 35203

Done this 12<sup>TH</sup> day of MARCH, 2007.

  
COUNSEL

# **EXHIBIT**

## **A**

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

**DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,**

CASE NO: CV- 06-246

## TRIAL BY JURY DEMANDED

## COMPLAINT

## STATEMENT OF THE PARTIES

1. Historical Rentals, Inc., "Plaintiff", is an Alabama corporation incorporated and doing business in Pike County, Alabama.
2. GAB Robins North America, Inc., "Defendant GAB", is a corporation incorporated in Delaware, with an Alabama place of business in Montgomery and also doing business in Pike County, Alabama through their agent, Troy Rhodes, an Alabama resident.
3. Troy Rhodes, "Defendant Rhodes", is an Alabama resident doing business in Pike County, Alabama.

**COUNT 1**

4. Plaintiffs adopt and reallege paragraphs 1 through 3 above as if fully set forth herein.
5. On or about the 1<sup>st</sup> day of April 2004, Plaintiffs entered into a written agreement

- with Defendant GAB through Defendant GAB's agent, Defendant Rhodes, by the terms of which Defendant GAB agreed to insure Plaintiffs' property that is rented or leased to others and intended for rental or lease to others for a term of one year.
6. In said agreement, Defendant GAB agreed to pay for damage done to Plaintiffs' property that is rented or leased to others and intended for rental or lease to others.
  7. The Plaintiffs' property was damaged on September 16, 2004 by Hurricane Ivan and incurred severe additional damage on September 23, 2004.
  8. Shortly thereafter, Plaintiffs' promptly notified Defendant GAB of the damage to the property.
  9. On or about the 6<sup>th</sup> day of January 2005, Defendant GAB notified Plaintiffs that Defendant GAB had no intention of paying for the cost of repair, thereby breaching said agreement by failing to cover the losses incurred by Plaintiffs because of the damaged property.
  10. As a proximate consequence to Defendant GAB's said breach, Plaintiffs havenot been able to repair the property and therefore unable to rent or lease the piece of property to any tenants. The cost of repair has been estimated at over \$400,000.00. Plaintiffs are able to rent the piece of property at a rate of \$500.00 per day.

**WHEREFORE**, Plaintiffs demand judgment against Defendant in the sum of the estimated cost of repair plus the loss of income from not being able to rent or lease the property, interest and costs.

**COUNT 2**

11. Plaintiffs adopt and reallege paragraphs 1 through 10 above as if fully set forth herein.
12. In the course of negotiating an agreement to insure Plaintiffs, Defendant GAB, by and through its agent, Defendant Rhodes, represented to Plaintiff that Defendant GAB would pay for the cost of repairing damages done to Plaintiffs' property that is rented or leased to others and intended for rental or lease to others.
13. The representations Defendant Rhodes and Defendant GAB made were false, and Defendants knew they were false when made. Defendant GAB did not pay for the repair of the damaged property. Defendants made such representations with the intention that Plaintiffs should rely upon them.
14. Plaintiffs believed the representations and relied on them in the purchase of the insurance agreement. As a result, Plaintiffs did not receive monies owed in order to repair the damaged property and lost and continues to lose money for not being able to rent or lease the damaged property.

**WHEREFORE**, Plaintiffs demand judgment against Defendants in an amount a jury deems appropriate.

**COUNT 3**

15. Plaintiffs adopt and reallege paragraphs 1 through 14 above as if fully set forth herein.

16. Plaintiffs made a claim with Defendant GAB on said policy agreement, but Defendant GAB intentionally refused to pay Plaintiff's claim and denied the same without justification.
17. Defendant's refusal to pay said claim was not based on any reasonably legitimate, arguable or debatable reason for denying the Plaintiffs' claim, or, in the alternative, Defendant GAB intentionally failed to determine whether there was a lawful basis for its refusal to pay said claim.

**WHEREFORE**, Plaintiffs demand judgment against Defendants in an amount a jury deems appropriate.

**COUNT 4**

18. Plaintiffs adopt and reallege paragraphs 1 through 17 above as if fully set forth herein.
19. Shortly after the 23<sup>rd</sup> day of September, 2004 the Plaintiffs reported the damage to their property to Defendant GAB in accordance with the insurance agreement.
20. Under the terms of the insurance agreement, Defendant GAB agreed to pay for covered loss or damage.
21. Defendant GAB did not ever pay these claims.
22. Defendant GAB did not pay these claims in the time period that Defendant GAB and plaintiff agreed upon, thus causing plaintiff to lose money by not being able to rent or lease the property.

**WHEREFORE,** Plaintiffs demand judgment against Defendants in an amount a jury deems appropriate.



N.J. Cervera (CER001)  
Attorney for the Plaintiffs



Matthew Baker (BAK017)  
Attorney for the Plaintiffs


OF COUNSEL:  
**CERVERA, RALPH & REEVES, LLC**  
P. O. Box 325  
914 South Brundidge Street  
Troy, Alabama 36081  
(334) 566-0116

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues of the cause.



Of Counsel for Plaintiffs

State of Alabama Unified Judicial System  Form ARChvP-93 Rev. 5/99	<b>COVER SHEET</b> <b>CIRCUIT COURT - CIVIL CASE</b> (Not For Domestic Relations Cases)	Case Number <b>CV 2006</b> <span style="border: 1px solid black; padding: 0 5px;">2</span> <span style="border: 1px solid black; padding: 0 5px;">46</span> Date of Filing: <b>09</b> <span style="border: 1px solid black; padding: 0 5px;">22</span> <span style="border: 1px solid black; padding: 0 5px;">2006</span> Month Day Year Judge Code: <span style="border: 1px solid black; padding: 0 5px;"> </span> <span style="border: 1px solid black; padding: 0 5px;"> </span> <span style="border: 1px solid black; padding: 0 5px;"> </span> <span style="border: 1px solid black; padding: 0 5px;"> </span>
<b>GENERAL INFORMATION</b>		
IN THE CIRCUIT COURT OF <u>PIKE COUNTY</u> , ALABAMA (Name of County)		
DONNIE and METRA HUGHES, dba Historical Rentals, Inc., v. <u>GAB ROBINS NORTH AMERICA, INC. and TROY RHODES</u> <div style="display: flex; justify-content: space-between;"> <span>Plaintiff</span> <span>Defendant</span> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>First Plaintiff</b>  <input checked="" type="checkbox"/> Business  <input type="checkbox"/> Government           </div> <div style="width: 45%;"> <b>First Defendant</b>  <input checked="" type="checkbox"/> Business  <input type="checkbox"/> Government           </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Individual  <input type="checkbox"/> Other           </div> <div style="width: 45%;"> <input type="checkbox"/> Individual  <input type="checkbox"/> Other           </div> </div>		
<b>NATURE OF SUIT:</b> Select primary cause of action, by checking box (check only one) that best characterizes your action:		
<b>TORTS: PERSONAL INJURY</b> <input type="checkbox"/> WDEA - Wrongful Death <input type="checkbox"/> TONG - Negligence: General <input type="checkbox"/> TOMV - Negligence: Motor Vehicle <input type="checkbox"/> TOWA - Wantonness <input type="checkbox"/> TOPL - Product Liability/AEMLD <input type="checkbox"/> TOMM - Malpractice-Medical <input type="checkbox"/> TOLM - Malpractice-Legal <input type="checkbox"/> TOOM - Malpractice-Other <input checked="" type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation <input type="checkbox"/> TOXX - Other: _____	<b>OTHER CIVIL FILINGS (cont'd)</b> <input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve <input type="checkbox"/> CVRT - Civil Rights <input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way <input type="checkbox"/> CTMP - Contempt of Court <input type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure <input type="checkbox"/> TOCN - Conversion <input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division <input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer <input type="checkbox"/> FORJ - Foreign Judgment <input type="checkbox"/> FORF - Fruits of Crime Forfeiture <input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition <input type="checkbox"/> PFAB - Protection From Abuse <input type="checkbox"/> FELA - Railroad/Seaman (FELA) <input type="checkbox"/> RPRO - Real Property <input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship <input type="checkbox"/> COMP - Workers' Compensation <input type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case	
<b>TORTS: PROPERTY INJURY</b> <input type="checkbox"/> TOPE - Personal Property <input type="checkbox"/> TORE - Real Property  <b>OTHER CIVIL FILINGS</b> <input type="checkbox"/> ABAN - Abandoned Automobile <input type="checkbox"/> ACCT - Account & Nonmortgage <input type="checkbox"/> APAA - Administrative Agency Appeal <input type="checkbox"/> ADPA - Administrative Procedure Act <input type="checkbox"/> ANPS - Adults in Need of Protective Services		
<b>ORIGIN (check one):</b> <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> REMANDED <input type="checkbox"/> APPEAL FROM DISTRICT COURT <input type="checkbox"/> TRANSFERRED FROM OTHER CIRCUIT COURT <input type="checkbox"/> OTHER: _____		
<b>HAS JURY TRIAL BEEN DEMANDED?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Note: Checking "Yes" does not constitute a demand for a jury trial (See Rules 38 and 39, Ala.R.Civ.P., for procedure)		
<b>RELIEF REQUESTED:</b> <input checked="" type="checkbox"/> MONETARY AWARD REQUESTED <input type="checkbox"/> NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: <b>BAK017</b> <span style="border: 1px solid black; padding: 0 5px;"> </span> <span style="border: 1px solid black; padding: 0 5px;"> </span>		
SEPTEMBER 22, 2006 Date		
Signature of Attorney/Party filing this form: 		
<b>MEDIATION REQUESTED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNDECIDED		



<b>STATE OF ALABAMA</b> Unified Judicial System 55-PIKE		Revised 2/14/05 <input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	<b>Case No.</b> CV200600024600
DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL		<b>CIVIL MOTION COVER SHEET</b> <i>Name of Filing Party:</i> D001 - GAB ROBINS NORTH AMERICA, IN	
<i>Name, Address, and Telephone No of Attorney or Party If Not Represented</i> KAREN FARLEY 2501 20TH PLACE SOUTH, STE 300 BIRMINGHAM, AL 35223 Attorney Bar No : FAR035		<input type="checkbox"/> Oral Arguments Requested	

**TYPE OF MOTION**

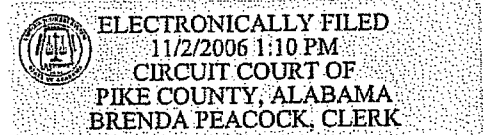
Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50 00) Joinder in Other Party's Dispositive Motion (i e <input type="checkbox"/> Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50 00) <input type="checkbox"/> Judgment on the Pleadings (\$50 00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50 00) Renewed Dispositive Motion(Summary Judgment, <input type="checkbox"/> Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50 00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50 00)  <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50 00)  *Motion fees are enumerated in §12-19-71(a) Fees pursuant to Local Act are not included Please contact the Clerk of the Court regarding applicable local fees.  <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input checked="" type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing  
 contemporaneously with this motion an Affidavit of  
 Substantial Hardship ☐

Date:  
 11/2/2006 1:09:24 PM

Signature of Attorney or Party:  
 /s/ KAREN FARLEY

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
 \*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs; )

v. )

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHODES, )

Defendants. )

Civil Action No.: CV-06-246

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DEFENDANT GAB ROBINS NORTH AMERICA, INC.'S  
MOTION TO DISMISS

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COMES NOW the Defendant, GAB Robins, North America, Inc., (Hereinafter referred to as "GAB Robins") pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant GAB Robins in the Plaintiffs' complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant GAB Robins shows unto the Court as follows:

1. On or about September 22, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed suit in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. and Troy Rhodes.
2. The Complaint sets forth various causes of action, including the following:
  - a. Breach of Contract;
  - b. Fraudulent Misrepresentation;
  - c. Fraudulent Suppression; and
  - d. Bad Faith.

3. Specifically, in the Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contact with Defendant, GAB Robins, by and through its alleged agent, Defendant Troy Rhodes. The Complaint alleges further that said agreement contained terms, by which Defendant GAB Robins, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Complaint alleges further that by the terms of said agreement, Defendant GAB Robins allegedly agreed to pay for damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins of the damage to said property.
5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiff that Defendant GAB Robins had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.
6. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Furthermore, GAB Robins provides services

for loss adjusting, appraisals and the third party administration of claims, but is not an insurer. (Exhibit A).

7. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression and bad faith against Defendant GAB Robins are due to be dismissed for failure to state a claim upon which relief can be granted. As GAB Robins does not underwrite insurance policies, it could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim or fraud in the making of an insurance contract against GAB Robins.

WHEREFORE, PREMISES CONSIDERED, Defendant GAB Robins North America, Inc. respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs against Defendant GAB Robins North America, Inc. pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 1<sup>st</sup> day of November, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc.

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

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Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

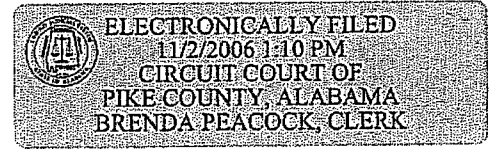
Facsimile: 205-967-2380  
Email: [jilloyd@lgwpc.com](mailto:jilloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System, by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 1<sup>st</sup> day of November, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

s/Karen D. Farley  
Of Counsel



## **EXHIBIT A**

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

**DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,**

**Plaintiffs,**

**v.**

**GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,**

**Defendants.**

**Civil Action No.: CV06-246**

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**AFFIDAVIT OF THOMAS SANTANGELO, ESQUIRE**

---

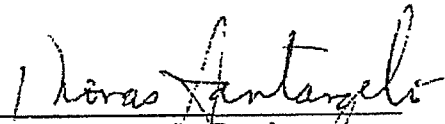
STATE OF NEW JERSEY)

COUNTY OF MORRIS)

Before me, the undersigned authority, a Notary Public in and for said County and in said State, personally appeared Thomas Santangelo, Deputy General Counsel for GAB Robins North America, Inc. and after first being duly sworn, testified as follows:

1. My name is Thomas Santangelo and I am over the age of nineteen (19) years.  
I am Deputy General Counsel for GAB Robins North America, Inc. and was so at all times relevant to the above-styled lawsuit.
2. GAB Robins North America, Inc.'s headquarters is located in Parsippany, New Jersey. GAB Robins North America, Inc. is not an insurance company or an insurer. It does not underwrite and issue insurance policies. GAB Robins North America, Inc. provides services for loss adjusting, appraisals and third party administration of claims, but is not an insurer.
3. I have personal knowledge of the foregoing.

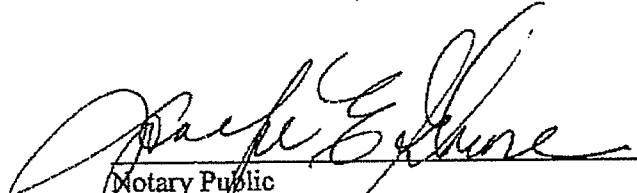
Further Affiant saith not.

  
Thomas Santangelo, Esquire

STATE OF NEW JERSEY  
COUNTY OF MORRIS

Sworn to and subscribed before me on this 15 day of November,  
2006.

(Seal)

  
Notary Public  
My commission expires:

JOCELYN E GILMORE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 2008



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: KAREN FARLEY  
kfarley@lgwpc.com

---

## NOTICE OF ELECTRONIC FILING

---

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 11/2/2006 1:10:45 PM

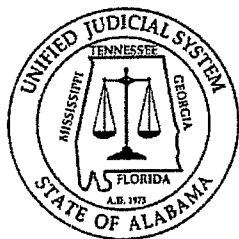
D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 11/2/2006 1:10:45 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: GAB ROBINS NORTH AMERICA, IN (PRO SE)  
NATIONAL REGISTERED AGTS  
150 SOUTH PERRY ST  
MONTGOMERY, AL 36104

---

## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 11/2/2006 1:10:45 PM

D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 11/2/2006 1:10:45 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: RHODES TROY (PRO SE)  
8130 OLD FEDERAL RD  
MONTGOMERY, AL 36117

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 11/2/2006 1:10:45 PM

D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)  
[Attorney: FARLEY KAREN DIANNE]

Notice Date: 11/2/2006 1:10:45 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

---

## NOTICE OF ELECTRONIC FILING

---

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 11/2/2006 1:10:45 PM

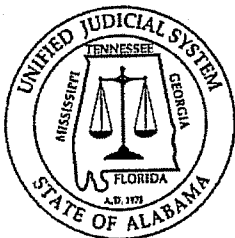
D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 11/2/2006 1:10:45 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: CERVERA N J  
ncervera@troycable.net

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 11/2/2006 1:10:45 PM

D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)  
[Attorney: FARLEY KAREN DIANNE]

Notice Date: 11/2/2006 1:10:45 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

AVSO352

CASE: CV 2006 000246.00  
JUDGE: ROBERT W BARRALABAMA JUDICIAL DATA CENTER  
CASE ACTION SUMMARY CONTINUATION  
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF PIKE COUNTY

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
FILED: 09/22/2006 TYPE: BAD FAITH/FRAUD/MISR TYPE TRIAL: JURY

TRACK:

DATE1: CA: CA DATE:  
DATE2: AMT: \$ .00 PAYMENT:

10.10.06, Mot to Curra/Baker Doc. 1001. sgd on 10/3/06.

11.2.06, AGAB Robins Mot to Dismiss

11.6/06, The Plaintiff shall respond to Defendant's Motion to Dismiss  
within thirty (30) days. Robert Barr Circuit Judge  
cc: Curra/Baker, Hoga/Alley

JAS 09/29/2006

**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

CASE NO: CV-2006-246-RWB

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHOADES, )  
HILB, ROGAL & HOBBS )  
WHOLESALE INSURANCE SERVICES, )  
INC., KIRKLIN & CO., LLC, a/k/a )  
HRH/KIRKLIN & CO., LLC and )  
RSUI GROUP, INC. )

TRIAL BY JURY DEMANDED

Defendants. )

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

COMES NOW, the Plaintiffs in the above-styled matter, pursuant to Rule 15 (a) of the Alabama Rules of Civil Procedure, and do hereby amend their original complaint against GAB Robins North America, Inc., and Troy Rhoades to add Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin & Co., LLC a/k/a/ HRH/Kirklin & Co., LLC and RSUI Group, Inc. as parties to the action and also so that the complaint shall read as follows:

**STATEMENT OF THE PARTIES**

1. Historical Rentals, Inc., "Plaintiff", is an Alabama corporation incorporated and doing business in Pike County, Alabama.
2. GAB Robins North America, Inc., "Defendant GAB", is a corporation incorporated in Delaware, with an Alabama place of business in Montgomery and

also doing business in Pike County, Alabama through their agent, Troy Rhoades, an Alabama resident.

3. Troy Rhoades, "Defendant Rhodes", is an Alabama resident doing business in Pike County, Alabama.
4. Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc., Troy Rhodes, and Kirklin and Co., LLC.
5. Kirklin and Co., LLC. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc. and Troy Rhoades.
6. Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin and Co., LLC are also known as and do business as HRH/Kirklin & Co., LLC, hereinafter referred to as "Defendant HRH/Kirklin."
7. RSUI Group, Inc. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc., Troy Rhoades, Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin and Co., LLC.

#### COUNT 1

8. Plaintiffs adopt and reallege paragraphs 1 through 7 above as if fully set forth herein.
9. On or about the 1<sup>st</sup> day of April 2004, Plaintiff entered into a written agreement with Defendant HRH/Kirklin and Defendant RSUI through by the terms of which

Defendant HRH/Kirklin on the authorized behalf of Defendant RSUI agreed to insure Plaintiff's property that is rented or leased to others and intended for rental or lease to others for a term of one year.

10. In said agreement, Defendant RSUI agreed to pay for damage done to Plaintiff's property that is rented or leased to others and intended for rental or lease to others.
11. Further, in said agreement, Defendant GAB was named as the adjusting company for said policy with Defendant Rhoades as the named adjuster.
12. The Plaintiff's property was damaged on September 16, 2004 by Hurricane Ivan and incurred severe additional damage on September 23, 2004.
13. Shortly thereafter, Plaintiff promptly notified Defendant HRH/Kirklin and Defendant GAB of the damage to the property.
14. On or about the 6<sup>th</sup> day of January 2005, Defendant GAB on behalf of Defendant RSUI notified Plaintiff that they had no intention of paying for the cost of repair, thereby breaching said agreement by failing to cover the losses incurred by Plaintiff because of the damaged property.
15. As a proximate consequence to the Defendants' said breach, Plaintiff has not been able to repair the property and therefore unable to rent or lease the piece of property to any tenants. The cost of repair has been estimated at over \$400,000.00. Plaintiff is able to rent the piece of property at a rate of \$500.00 per day.

**WHEREFORE**, Plaintiff demands judgment against the Defendants in the sum of the estimated cost of repair plus the loss of income from not being able to rent or lease the property, interest and costs.

**COUNT 2**

16. Plaintiff adopts and realleges paragraphs 1 through 15 above as if fully set forth herein.
17. In the course of negotiating an agreement to insure Plaintiff, Defendant HRH/Kirklin represented to Plaintiff that Defendant would pay for the cost of

repairing damages done to Plaintiff's property that is rented or leased to others and intended for rental or lease to others.

18. The representations Defendant HRH/Kirklin made were false, and Defendants knew they were false when made. Neither Defendant HRH/Kirklin nor Defendant RSUI ever paid for the repair of the damaged property. Defendants made such representations with the intention that Plaintiff should rely upon them.
19. Plaintiff believed the representations and relied on them in the purchase of the insurance agreement. As a result, Plaintiff did not receive monies owed in order to repair the damaged property and lost and continues to lose money for not being able to rent or lease the damaged property.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.

### **COUNT 3**

20. Plaintiff adopts and realleges paragraphs 1 through 19 above as if fully set forth herein.
21. Plaintiff made a claim with Defendants GAB, RSUI and/or HRH/Kirklin on said policy agreement, but Defendant GAB on or about January 5, 2005, on behalf of Defendant RSUI intentionally refused to pay Plaintiff's claim and denied the same without proper justification.
22. Defendant GAB's refusal to pay said claim was not based on any reasonably legitimate, arguable or debatable reason for denying the Plaintiff's claim, or, in the alternative, Defendant GAB intentionally failed to determine whether there was a lawful basis for its refusal to pay said claim.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.

**COUNT 4**

23. Plaintiff adopts and realleges paragraphs 1 through 22 above as if fully set forth herein.
24. Shortly after the 23<sup>rd</sup> day of September, 2004 the Plaintiffs reported the damage to their property to Defendants GAB, RSUI and/or HRH/Kirklin in accordance with the insurance agreement.
25. Under the terms of the insurance agreement, Defendants GAB by and through Defendant Rhoades was to act as the adjuster of the property, thus a fiduciary duty existed between Defendants GAB and its agent Defendant Rhoades to the Plaintiffs.
26. Defendant GAB, through Defendant Rhoades did not ever properly adjust these claims, thereby breaching said fiduciary duty.
27. As a result of Defendant GAB's and Defendant Rhoades' said breach, Defendants HRH/Kirklin and RSUI did not ever pay these claims thus causing plaintiff to lose money by not being able to rent or lease the property.

**COUNT 5**

28. Plaintiff adopts and realleges paragraphs 1 through 27 above as if fully set forth
29. Shortly after the 23<sup>rd</sup> day of September, 2004 the Plaintiffs reported the damage to their property to Defendants GAB, RSUI and/or HRH/Kirklin in accordance with the insurance agreement.
30. Under the terms of the insurance agreement, Defendants HRH/Kirklin and/or RSUI agreed to pay for covered loss or damage within a reasonable time of receiving the sworn proof of loss from plaintiff.
31. Defendants HRH/Kirklin and RSUI did not ever pay these claims.
32. Defendants HRH/Kirklin and RSUI did not ever pay these claims in the time period that the Defendants and plaintiffs agreed upon thus causing the plaintiffs to

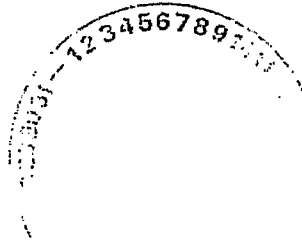
lose money by not being able to rent or lease the property.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.



N.J. Cervera (CER001)  
Matthew Baker (BAK017)  
Attorneys for the Plaintiff

OF COUNSEL:  
**CERVERA, RALPH & REEVES, LLC**  
914 South Brundidge Street  
Troy, Alabama 36081  
(334) 566-0116



**JURY DEMAND**

Plaintiff demands a trial by jury on all issues of the cause.




Of Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served on this the  
6<sup>th</sup> day of November, 2006 upon:

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Lloyd, Gray & Whitehead, P.C.  
2501 Twentieth Place North  
Suite 300  
Birmingham, Alabama 35223

  
\_\_\_\_\_  
OF COUNSEL

State of Alabama  
Unified Judicial System

SUMMONS

Case Number:

CV-2006-246-RWB

Form C-34 Rev.6/88

-CIVIL-

IN THE CIRCUIT COURT OF PIKE COUNTYPlaintiff DONNIE and METRA HUGHES, dba HISTORICAL RENTALS, INC. v. Defendant GAB ROBINS NORTH AMERICA, INC. and TROY RHOADES, HILB, ROGAL & HOBBS WHOLESALE INS. SERVICES, INC, KIRKLIN & CO., LLC aka HRH/Kirklin & CO., LLC and RSUI GROUP, INC.**NOTICE TO: TROY RHOADES, GAB ROBINS NORTH AMERICA, INC., National Registered Agents, Inc., 150 South Perry Street, Montgomery, AL 36104.**

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to file the original of your written answer, either admitting or denying each allegation in the complaint with the Clerk of this Court. A copy of your answer must be mailed or hand delivered by you or your attorney to the Plaintiff or Plaintiff's Attorney: **MATTHEW M. BAKER** whose address is **Cervera, Ralph & Reeves, L.L.C., 914 S. Brundidge St., P.O. Box 325, Troy, AL, 36081, (334) 566-0116.**

This answer must be mailed or delivered with 30 days after this Summons and Complaint were delivered to you or a judgment by default may be entered against you for the money or other things demanded in the Complaint.

**TO ANY SHERIFF OR PERSON AUTHORIZED** by the Alabama Rules of Civil Procedure:

You are hereby commanded to serve this Summons and a copy of the Complaint in this action upon the Defendant

XXX Service by certified mail of this Summons is initiated upon the written request of **Matthew M. Baker** pursuant to the Alabama Rules of Civil Procedure.

Date: 11-8-06  
By: Nov. 3, 2006

Check/Registered

Donna M. Peacock

Certified mail requested:

[Signature]  
Plaintiff's Attorney Signature

**RETURN ON SERVICE:**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Troy Rhoades  
GAB Robins North America, Inc.  
National Registered Agents, Inc.  
150 South Perry St.  
Montgomery, AL 36104

2. Article Number  
(Transfer from service label)

CV006-246 2006

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature [Signature] ☒ Agent ☐ Addressee
- B. Received by (Printed Name) Donna M. Peacock C. Date of Delivery 11/8/06
- D. Is delivery address different from item 1? ☐ Yes ☒ No  
If YES, enter delivery address below:
3. Service Type ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.
- Restricted Delivery? (Extra Fee) ☒ Yes

**Restricted Delivery**

NOV 2006  
FILED  
Brenda Meadows  
Court Clerk  
Troy, AL

7004 1160 0004 7820 9472

Domestic Return Receipt

102595-02-M-1540

7004 1160 0004 7820 9472

U.S. Postal Service<sup>TM</sup>

**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ <u>1.63</u>
Certified Fee	<u>2.40</u>
Return Receipt Fee (Endorsement Required)	<u>1.85</u>
Restricted Delivery Fee (Endorsement Required)	<u>3.70</u>
Total Postage & Fees	\$ <u>8.34</u>

Sent To

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

Troy Rhoades  
GAB Robins North Ame  
National Registered Age  
150 South Perry St.  
Montgomery, AL 36104

PS Form 3800, June 2004

PS Form 3811, February 2004

State of Alabama  
Unified Judicial System

SUMMONS

Case Number:

CV-2006-246-RWB

Form C-34 Rev. 6/88

-CIVIL-

IN THE CIRCUIT COURT OF PIKE COUNTYPlaintiff **DONNIE and METRA HUGHES, dba HISTORICAL RENTALS, INC.** v. Defendant **GAB ROBINS NORTH AMERICA, INC. and TROY RHOADES, HILB, ROGAL & HOBBS WHOLESALE INS. SERVICES, INC, KIRKLIN & CO., LLC aka HRH/Kirklin & CO., LLC and RSUI GROUP, INC.****NOTICE TO: KIRKLIN & COMPANY, LLC, Registered Agent, Corporation Service Company, 2711 Centerville Road, Ste. 400, Wilmington, DE 19808.**

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to file the original of your written answer, either admitting or denying each allegation in the complaint with the Clerk of this Court. A copy of your answer must be mailed or hand delivered by you or your attorney to the Plaintiff or Plaintiff's Attorney: **MATTHEW M. BAKER** whose address is **Cervera, Ralph & Reeves, L.L.C., 914 S. Brundidge St., P.O. Box 325, Troy, AL, 36081, (334) 566-0116.**

This answer must be mailed or delivered with 30 days after this Summons and Complaint were delivered to you or a judgment by default may be entered against you for the money or other things demanded in the Complaint.

TO ANY SHERIFF OR PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

You are hereby commanded to serve this Summons and a copy of the Complaint in this action upon the Defendant

XXX Service by certified mail of this Summons is initiated upon the written request of **Matthew M. Baker** pursuant to the Alabama Rules of Civil Procedure.

Date: 11-7-06  
Nov. 3, 2006  
By: [Signature]

Clerk of Register

Certified mail requested: [Signature]

## RETURN ON SERVICE:

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Kirklin & Company, LLC  
Registered Agent  
Corporation Serv. Co.  
2711 Centerville Road, Ste. 400  
Wilmington, DE 19808

## 2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

Laura Cooper

- ☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

Laura Cooper

## C. Date of Delivery

## D. Is delivery address different from item 1?

If YES, enter delivery address below:

- ☐ Yes  
☐ No

## 3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

- ☒ Yes

Postage	\$ <u>1.63</u>
Certified Fee	<u>2.40</u>
Return Receipt Fee (Endorsement Required)	<u>1.85</u>
Restricted Delivery Fee (Endorsement Required)	<u>3.70</u>
Total Postage & Fees	\$ <u>8.34</u>

Sent To Kirklin & Company, LLC  
Registered Agent  
Corporation Serv. Co.  
2711 Centerville Road, S.  
Wilmington, DE 19808

PS Form 3809, Jan.

7004 1160 0004 7820 9458

Domestic Return Receipt

102595-02-M-1540

State of Alabama  
Unified Judicial System

## SUMMONS

Case Number:

CV-2006-246-RWB

Form C-34 Rev. 6/88

-CIVIL-

IN THE CIRCUIT COURT OF PIKE COUNTY

Plaintiff **DONNIE and METRA HUGHES, dba HISTORICAL RENTALS, INC.** v. Defendant **GAB ROBINS NORTH AMERICA, INC. and TROY RHOADES, HILB, ROGAL & HOBBS WHOLESALE INS. SERVICES, INC, KIRKLIN & CO., LLC aka HRH/Kirklin & CO., LLC and RSUI GROUP, INC.****NOTICE TO: RSUI GROUP, INC., The Registered Agent, The Corporation Trust Co., Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.**

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to file the original of your written answer, either admitting or denying each allegation in the complaint with the Clerk of this Court. A copy of your answer must be mailed or hand delivered by you or your attorney to the Plaintiff or Plaintiff's Attorney: **MATTHEW M. BAKER** whose address is **Cervera, Ralph & Reeves, L.L.C., 914 S. Brundidge St., P.O. Box 325, Troy, AL, 36081, (334) 566-0116.**

This answer must be mailed or delivered with **30** days after this Summons and Complaint were delivered to you or a judgment by default may be entered against you for the money or other things demanded in the Complaint.

**TO ANY SHERIFF OR PERSON AUTHORIZED** by the Alabama Rules of Civil Procedure:

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XXX Service by certified mail of this Summons is initiated upon the written request of **Matthew M. Baker** pursuant to the Alabama Rules of Civil Procedure.

Date: 11-7-06  
Nov. 3, 2006  
 By: [Signature]  
 Clerk/Registrar

Certified mail requested: [Signature]  
 Plaintiff's Attorney Signature

## RETURN ON SERVICE:

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

RSUI GROUP, INC.  
 The Registered Agent  
 The Corporation Trust Co.  
 Corporation Trust Ctr., 1209 Orange  
 Wilmington, DE 19801

2. Article Number  
(Transfer from service label)

7004 1160 0004 7820 9465

## COMPLETE THIS SECTION ON DELIVERY

- A. Signature [Signature] ☐ Agent ☒ Addressee
- B. Received by: (Printed Name) [Signature] C. Date of Delivery 10 NOV 2006
- D. Is delivery address different from item 1? ☐ Yes ☒ No  
 If YES, enter delivery address below:
3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☒ Yes

U.S. Postal Service™  
CERTIFIED MAIL™ RECEIPT  
(Domestic Mail Only; No Insurance Coverage)For delivery information visit our website at [www.usps.gov](http://www.usps.gov)

Postage	\$ .63
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	3.70
Total Postage & Fees	\$ 8.34

Sent To: **RSUI GROUP, INC.**  
**The Registered Agent**  
**The Corporation Trust Co.**  
**Corporation Trust Ctr., 1209 C**  
**Wilmington, DE 19801**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

State of Alabama  
Unified Judicial System

## SUMMONS

Case Number:

CV-2006-246-RWB

Form C-34 Rev.6/88

-CIVIL-

IN THE CIRCUIT COURT OF PIKE COUNTYPlaintiff DONNIE and METRA HUGHES, dba HISTORICAL RENTALS, INC. v. Defendant GAB ROBINS NORTH AMERICA, INC. and TROY RHOADES, HILB, ROGAL & HOBBS WHOLESALE INS. SERVICES, INC. KIRKLIN & CO., LLC aka HRH/Kirklin & CO., LLC and RSUI GROUP, INC.**NOTICE TO: HILB, ROGAL & HOBBS WHOLESALE INS. SERVICES, INC., Registered Agent, Corporation Service Company, 2711 Centerville Road, Ste. 400, Wilmington, DE 19808.**The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to file the original of your written answer, either admitting or denying each allegation in the complaint with the Clerk of this Court. A copy of your answer must be mailed or hand delivered by you or your attorney to the Plaintiff or Plaintiff's Attorney: MATTHEW M. BAKER whose address is Cervera, Ralph & Reeves, L.L.C., 914 S. Brundidge St., P.O. Box 325, Troy, AL, 36081, (334) 566-0116.This answer must be mailed or delivered with 30 days after this Summons and Complaint were delivered to you or a judgment by default may be entered against you for the money or other things demanded in the Complaint.**TO ANY SHERIFF OR PERSON AUTHORIZED** by the Alabama Rules of Civil Procedure:

You are hereby commanded to serve this Summons and a copy of the Complaint in this action upon the Defendant

XXX Service by certified mail of this Summons is initiated upon the written request of Matthew M. Baker pursuant to the Alabama Rules of Civil Procedure.Date: 11.7.06  
By: Nov. 3, 2006

Clerk/Registrar

Certified mail requested:

Plaintiff's Attorney Signature

## RETURN ON SERVICE:

## SENDER: COMPLETE THIS SECTION

## COMPLETE THIS SECTION ON DELIVERY

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage)For delivery information visit our website at [www.usps.gov](http://www.usps.gov)

OFFICIAL II

Postage	\$ 1.63
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	3.70
Total Postage & Fees	\$ 8.34

Sent To Hilb, Rogal & Hobbs Wholesale Services, Inc.  
 Street, Apt. No. or PO Box No. Corporation Service Co.-Registered  
 City, State, Zi 2711 Centerville Road, Suite 400  
Wilmington, DE 19808

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Hilb, Rogal & Hobbs Wholesale Ins. Services, Inc.  
 Corporation Service Co.-Registered Agent  
 2711 Centerville Road, Suite 400  
 Wilmington, DE 19808

2. Article Number  
(Transfer from service label)

PS Form 3811, February 2004

## A. Signature

Laura Cooper
☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

Laura Cooper

## C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

NOV 13 2006

## 3. Service Type

☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

☒ Yes

7004 1160 0004 7820 9441

Domestic Return Receipt

102595-02-M-1540

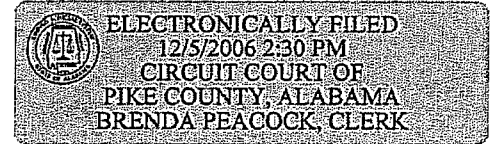
<b>STATE OF ALABAMA</b> Unified Judicial System		Revised 2/14/05	<b>Case No.</b>  CV200600024600
55-PIKE		<input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	
DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL		<b>CIVIL MOTION COVER SHEET</b> <i>Name of Filing Party:</i> D001 - GAB ROBINS NORTH AMERICA, IN	
<i>Name, Address, and Telephone No. of Attorney or Party if Not Represented.</i>  KAREN FARLEY 2501 20TH PLACE SOUTH, STE 300 BIRMINGHAM, AL 35223  Attorney Bar No. FAR035		<input type="checkbox"/> Oral Arguments Requested	

**TYPE OF MOTION**

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. <input type="checkbox"/> Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00) Renewed Dispositive Motion(Summary Judgment, <input type="checkbox"/> Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50.00)  <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00)  *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees  <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input checked="" type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship <input type="checkbox"/>	Date:  12/5/2006 2:29:53 PM	Signature of Attorney or Party:  /s/ KAREN FARLEY
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\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
 \*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV-06-246

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DEFENDANT GAB ROBINS NORTH AMERICA, INC.'S  
SECOND MOTION TO DISMISS

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COMES NOW the Defendant, GAB Robins, North America, Inc., (hereinafter referred to as "GAB Robins") pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant GAB Robins in the Plaintiffs' First Amended Complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant GAB Robins shows unto the Court as follows:

1. On or about November 6, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed their First Amended Complaint in the above-styled matter in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. and Troy Rhodes. Plaintiff's added as party Defendants, Hilbe, Rogal & Hobbs Wholesale Insurance Services, Inc.; Kirklin & Co., LLC a/k/a HRH/Kirklin & Co., LLC and RSUI Group, Inc.
2. The Plaintiffs' First Amended Complaint sets forth various causes of action, including the following:

- a. Breach of Contract;
  - b. Fraudulent Misrepresentation;
  - c. Fraudulent Suppression;
  - d. Bad Faith;
  - e. Breach of Fiduciary Duty; and
  - f. Negligence in the adjustment of an insurance claim.
3. Specifically, in the Plaintiffs' First Amended Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contract with Defendant, HRH/Kirklin & Co., LLC and RSUI Group, Inc. and that in said agreement, Defendant GAB Robins, by and through its alleged agent, Defendant Troy Rhodes was named as the adjusting company. The Plaintiffs' First Amended Complaint alleges further that said agreement contained terms, by which Defendants, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Plaintiffs' First Amended Complaint alleges further that by the terms of said agreement, Defendant GAB Robins was allegedly contacted to evaluate damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins of the damage to said property.

5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiffs that Defendant GAB Robins, on behalf of Defendant RSUI, had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.
6. Plaintiffs allege further that Defendant GAB Robins and Defendant Troy Rhodes breached a fiduciary duty owed to the Plaintiffs in the adjustment of the Plaintiffs property damage claim.
7. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Furthermore, GAB Robins provides services for loss adjusting, appraisals and the third party administration of claims, but is not an insurer. (Exhibit A).
8. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression, breach of fiduciary duty and bad faith against Defendant GAB Robins are due to be dismissed for failure to state a claim upon which relief can be granted. As GAB Robins does not underwrite insurance policies, it could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim, breach of fiduciary duty or fraud in the making of an insurance contract against GAB

Robins. Any duty owed by GAB Robins in the adjustment of the claim was owed to Defendants RSUI Group, Inc. and Defendant HRH/Kirklin & Co., LLC.

WHEREFORE, PREMISES CONSIDERED, Defendant GAB Robins North America, Inc. respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs First Amended Complaint against Defendant GAB Robins North America, Inc. pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 5th day of November, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc.

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North,  
Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

Facsimile: 205-967-2380

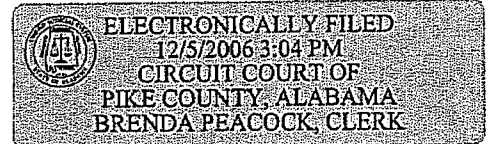
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System, by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 5th day of November, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@trovcable.net](mailto:mbaker@trovcable.net)  
[ncervera@trovcable.net](mailto:ncervera@trovcable.net)

s/Karen D. Farley  
Of Counsel



**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

**CASE NO: CV-2006-246-RWB**

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHOADES, )  
HILB, ROGAL & HOBBS )  
WHOLESALE INSURANCE SERVICES, )  
INC., KIRKLIN & CO., LLC, a/k/a )  
HRH/KIRKLIN & CO., LLC and )  
RSUI GROUP, INC. )

**TRIAL BY JURY DEMANDED**

Defendants. )

**PLAINTIFFS' RESPONSE TO DEFENDANT**  
**GAB ROBINS NORTH AMERICA, INC'S MOTION TO DISMISS**

**COME NOW**, the Plaintiffs in the above-styled matter, and in response to Defendant GAB Robins North America, Inc.'s Motion to Dismiss, hereinafter referred to as Defendant GAB, does hereby state the following:

1. That on or about January 5, 2005 and January 25, 2005, Defendant GAB explicitly rejected insurance claims made by the Plaintiffs regarding damage to their property as evidenced by the two letters attached as Exhibits A and B.
2. Additionally, on or about February 8, 2005, Defendant GAB attempted to resolve a claim with a payment made by check, a copy of which is attached hereto as Exhibit C.
3. Said payment was made by Defendant GAB by one of Defendant GAB's

company checks.

4. Exhibits A, B and C would show that Defendant GAB was the entity that was responsible for handling, investigating, rejecting and/or paying claims made by the Plaintiffs regarding the property in Pike County.
5. The letters further evidence the fact that Defendant GAB was the entity which was indeed contacted, that they conducted an investigation and that they subsequently rejected the Plaintiff's claims.
6. Both letters (Exhibits A and B) are written on Defendant GAB's letterhead and signed by one Bruce Clapp, who identifies himself as a branch manager who is employed by Defendant GAB and is writing on behalf of RSUI Indemnity Company, a named defendant in the amended complaint.
7. In the letterhead of Exhibits A and B, Bruce Clapp's email address is listed as clappb@gabrobins.com, another indication of his employment with Defendant GAB and Defendant GAB's involvement.
8. All evidence points to Defendant GAB as the primary entity who handled Plaintiff's claims from start to finish and their involvement in Plaintiff's claims cannot be disputed.
9. As evidenced by Plaintiff's Exhibits A, B, and C, Defendant GAB was involved in Plaintiff's allegations of fraudulent misrepresentation, fraudulent suppression, breach of contract, and bad faith refusal to pay claims.
10. Additionally, Plaintiff has since amended the original complaint to include other entities involved in the fraudulent misrepresentation, fraudulent

suppression, breach of contract, and bad faith refusal to pay Plaintiff's claims and said amended complaint more specifically allege Defendant GAB's involvement and wrongdoings.

**WHEREFORE**, it is respectfully requested that this Court deny Defendant GAB's motion to dismiss and require them to answer the complaint in a timely manner.

Respectfully submitted, this the 5<sup>th</sup> day of December, 2006.

s/ Matthew Baker  
N. J. Cervera (CER001)  
Matthew Baker (BAK017)  
Attorneys for the Plaintiffs

OF COUNSEL:  
**CERVERA, RALPH & REEVES, LLC**  
914 South Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
(334) 566-0116 phone  
(334) 566-4073 facsimile

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been electronically delivered and put in the United States mail on this the 5<sup>th</sup> day of December, 2006 upon:

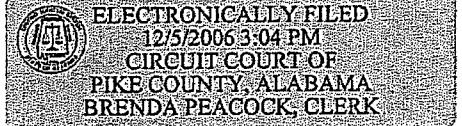
James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Lloyd, Gray & Whitehead, P.C.  
2501 Twentieth Place North  
Suite 300  
Birmingham, Alabama 35223

s/ Matthew Baker  
OF COUNSEL



GAB Robins North America, Inc.

(A)



T: 317-815-3400  
F: 317-815-3410  
E mail: clappb@gabrobins.com

January 6, 2005

**Reservation of Rights**  
**Certified Mail Return Receipt Request & US Regular Mail**

Gamma Gamma Chapter of PKPhi  
C/O Historical Rentals, Inc.  
P.O. Box 215  
Pahhokee, FL 33476

Attn: Donny Hughes

Our Insured: Gamma Gamma Chapter of PKPhi  
Claim Number: 55820-37670  
Policy Number: NHD332474  
Date of Loss: 9/16/04

We have received notice of a claim being made under the above referenced policy of insurance. Specifically, claim made for hurricane damage as a result of Hurricane Ivan. Indications were made that interior damage may have also occurred as a result.

Gamma Gamma Chapter of PKPhi was issued a policy of insurance policy number NHD332474, by RSUI Indemnity Company for the policy period of 4/1/2004 to 4/1/2005. You are now seeking benefits under the above referenced policy of insurance.

First, we respectfully wish to call your attention to sections of this policy as they relate to your duties after a loss occurs, and other insurance clauses:

Form SB 86 01 (11/97) States on page 2-3 under Loss Conditions:

"C. Duties In the Event of Loss or Damage

- (1) You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken
- b. Give us prompt notice of the loss or damage. Include a description of the property involved
- c. As soon as possible, give us a description of how, when, and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered property from such loss, for consideration in the settlement of the claim. However, we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a covered Cause of Loss. This will not increase the Limit of Insurance.

55820-37670

Page 2

- e. Also, if feasible, set damaged property aside and in the best possible order, for examination.
- f. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- g. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- h. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- i. Cooperate with us in the investigation or settlement of the claim."

Form SB 86 01 (11/97) States on page 4 under Loss Conditions:

" F. Other Insurance

- (1) You may have other insurance subject to the same plan, terms, conditions And provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
- (2) If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage."

Secondly, we respectfully wish to call your attention to other areas of concern relative to our handling of this matter:

Form SB 86 01 (11/97) States on page 5 under Loss Conditions:

" J. Vacancy...

(3) Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:  
...(4) water damage;"

Form SB 86 02 (04/99) States on page 4 under Exclusions:

"2. We will not pay for loss or damage caused by or resulting from any of the following:

...d.

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality in property that causes it to damage or destroy itself;"

The issues mentioned above refer to both general duties after a loss and concerns expressed specifically for this claim as they relate to potential vacancy of the property prior to this loss and as they relate to the general conditions of the property prior to the loss limiting our ability to pay for loss due to wear and tear as well as general deterioration of the property.

55820-37670


Page 3

The fact of this claim are too vague to determine at this time whether or not the claims being asserted will be covered by the provisions of the policy. Your interests and the Company's interests may be better served and protected by an investigation of the facts concerning the questions of coverage and your potential liability. Therefore, RSUI Indemnity Company will proceed to investigate this matter under a full and complete reservation of all our rights and defenses. This reservation of rights extends to all facts, known and unknown, as they may pertain to this claim.

Any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance. The Company further reserves the right to deny coverage and withdraw from any further participation in this matter altogether, should facts be developed that determine the above captioned policy does not cover this loss.

By naming the specific grounds for the possibility of no coverage or benefits, we do not waive any of our rights or any of the other provisions of the policy of insurance and specifically reserve all of our rights and remedies under this policy and under the statutes and common law.

Sincerely,

  
RSUI Indemnity Company by  
Bruce G. Clapp, AIC  
Indiana ICS Branch Manager  
GAB Robins N.A., Inc.

cc: Mr. Dan Durbin, RSUI Indemnity Company  
Mr. Mark Schwartz, RSUI Indemnity Company  
Mr. Richard Jungman, Hobbs group / Kirklin & Co., LLC



GAB Robins North America, Inc.

(B)

450 E. 96<sup>th</sup> Street, Suite 320  
Indianapolis, IN 46240  
T: 317-815-3400  
F: 317-815-3410  
E mail: clappb@gabrobins.com

January 25, 2005

Gamma Gamma Chapter of PKPhi  
C/O Historical Rentals, Inc.  
P.O. Box 215  
Pahhokee, FL 33476

Attn: Donny Hughes

Our Insured: Gamma Gamma Chapter of PKPhi  
Claim Number: 55820-37669  
Policy Number: NHD332474  
Date of Loss: 9/23/04

This acknowledges our investigation of the above captioned claim. Specifically, claim made for vandalism from members of the local fraternity. Gamma Gamma Chapter of PKPhi was issued a policy of insurance policy number NHD332474, by RSUI Indemnity Company for the policy period of 4/1/2004 to 4/1/2005. You are now seeking benefits under the above referenced policy of insurance. Consequently, we have completed our investigation into this matter.

Our field adjuster prepared an estimate of what *may* be construed as *vandalism* by person(s) unknown. You have alleged that the fraternity members, as tenants of this house are responsible for this damage. I should point out to you, the specific definition for vandalism as it relates to your claim.

Adjustment of Property Losses. Thomas/Reed, 1977, on page 116 discusses the peril of vandalism and describes that as "...willful destruction of works of art & beauty..." as well as "willful and malicious injury to or destruction of the property of others with malicious intent." Based upon this accepted definition, accidental damage nor wear and tear, whether normal or excessive, would be considered vandalism and recoverable under this policy. Our adjuster prepared an estimate for what may be construed as possible vandalism but it is, at replacement cost, well under the \$ 10,000 deductible for this peril.

You have expressed concerns as well with electrical wiring done by the tenant. Your policy form SB8602 (Ed. 04/99) provides on page 5, under Section C: Exclusions:

- "3. We will not pay for loss or damage caused by or resulting from any of the following:
- ...c Faulty, inadequate or defective:
  - (2). design, specifications, workmanship, repair, construction, renovation,

remodeling, grading, compaction: ... of part or all of any property on or off the described premises."

It is the therefore the position of RSUI Indemnity Company that there will be no payment forthcoming on this claim to Gamma Gamma Chapter of PKPhi C/O Historical Rentals, Inc under the above mentioned policy of insurance. Therefore, we must respectfully contend that Gamma Gamma Chapter of PKPhi C/O Historical Rentals, Inc is not entitled to benefits under the above referenced policy of insurance.

Our decision has been based on all facts presently available to us. If you have additional knowledge or facts relevant to this matter, please notify us in writing immediately so that we can evaluate the additional information and/or new allegations for potential coverage under the above policy. Please note that any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance

Any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance. The Company further reserves the right to deny coverage and withdraw from any further participation in this matter altogether, should facts be developed that determine the above captioned policy does not cover this loss

By naming the specific grounds for the possibility of no coverage or benefits, we do not waive any of our rights or any of the other provisions of the policy of insurance and specifically reserve all of our rights and remedies under this policy and under the statutes and common law.

Sincerely,

RSUI Indemnity Company by  
Bruce G. Clapp, AIC ...  
Indiana ICS Branch Manager  
GAB Robins N.A., Inc.

cc: Mr. Dan Durbin, RSUI Indemnity Company  
Mr. Mark Schwartz, RSUI Indemnity Company  
Mr. Richard Jungman, Hobbs group / Kirklin & Co., LLC

(c)

CLAIM INFORMATION	
CLAIMANT NAME: GAMMA GAMMA CHAPTER OF PK	
OCCURRENCE DATE: 09/16/04	PHONE: 317-815-3400
GAB FILE NUMBER: 55820-37670	FAX: 317-815-3410
INSURANCE COMPANY:	
POLICY NUMBER:	
INSURED NAME: GETTYSBURG NATIONAL INDEMNITY (SAC)	DATE: 02/08/05
CLAIM NUMBER: N/A	

CONTACT GAB IF YOU HAVE ANY QUESTIONS CONCERNING THIS CHECK

PAYMENT INFORMATION	
PAYMENT FOR:	
INVOICE NUMBER:	
CHECK NUMBER: 5135588	
CHECK AMOUNT: \$3,105.61	

THE FACE OF THIS DOCUMENT HAS A MULTICOLOR BACKGROUND - HOLD TO LIGHT TO VIEW

**GAB Robins**  
GAB Robins North America, Inc.  
INDIANAPOLIS, IN 46240-3754  
460 EAST 90TH STREET  
INDIANAPOLIS, IN 46240-3754  
GAB Robins North America, Inc.  
CHARTERED OF GETTYSBURG NATIONAL INDEMNITY (SAC)

Three thousand one hundred five and 01/100 Dollars  
PAY TO THE ORDER OF  
GAMMA GAMMA CHAPTER OF PK  
HISTORICAL RENTALS, INC.

CITIBANK DELAWARE  
ONE PENNS WY, NEW CASTLE, DE 19720

CHECK NO. 5135588  
CHECK DATE 02/08/05  
GAB FILE NO. 55820-37670  
AMOUNT \$3,105.61  
VOID AFTER 60 DAYS

*Joseph M. Zych*



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: KAREN FARLEY  
kfarley@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 12/5/2006 2:30:35 PM

D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 12/5/2006 2:30:35 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: HILB, ROGAL & HOBBS WHOLESAL (PRO SE)  
CORPORATION SERVICE CO  
2711 CENTERVILLE RD/400  
WILMINGTON, DE 19808

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 12/5/2006 2:30:35 PM

D001 GAB ROBINS NORTH AMERICA, IN  
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 12/5/2006 2:30:35 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



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MONTGOMERY, AL 36104

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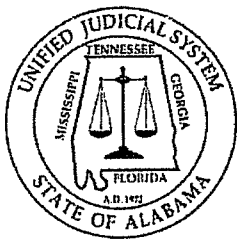
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mbaker@troycable.net

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mbaker@troycable.net

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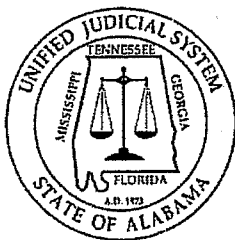
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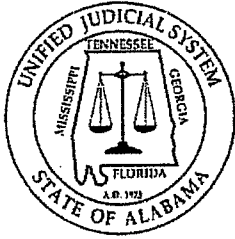
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AVS0352

CASE: CV 2006 000246.00  
JUDGE: ROBERT W BARRALABAMA JUDICIAL DATA CENTER  
CASE ACTION SUMMARY CONTINUATION  
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF PIKE COUNTY

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
FILED: 09/22/2006 TYPE: BAD FAITH/FRAUD/MISR TYPE TRIAL: JURY

TRACK:

DATE1: CA: CA DATE:  
DATE2: AMT: \$ .00 PAYMENT:

10/10/06 Not to Cervera/Baker Doc 1 s/d on 10/3/06.

11/3/06 AGAB Robins Mot to Dismiss

11/6/06 The Plaintiff should respond to Defendant's Motion to Dismiss  
with a Verdict (30) days. Robert W Barr Circuit Judge  
cc: Cervera/Baker, Hogg/Arley

11/6/06 It's Not Amended Complaint

11/7/06 JPC to Doc 3 - Doc 5 by cert mail.

11/7/06 JPC returned to Doc 3 @ new address.

11/14/06 Not to Cervera/Baker - Doc 3 s/d on 11/8/06.

11/14/06 Not to Cervera/Baker - Doc 4 s/d on 11/10/06.

11/20/06 Not to Cervera/Baker - Doc 5 s/d on 11/10/06.

11/20/06 Not to Cervera/Baker - Doc 3 s/d on 11/13/06.

12/5/06 AGAB Robins 2nd Motion to Dismiss

12/5/06 It's Resp. to A's Mot to Dismiss.

12/7/06 Defendant's Motion to Dismiss is denied.

cc: Cervera/Baker, Hogg/Arley Robert W Barr Circuit Judge

JAS 09/29/2006

<b>STATE OF ALABAMA</b> Unified Judicial System		Revised 2/14/05	<b>Case No.</b>  CV200600024600
55-PIKE		<input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	
DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL		<b>CIVIL MOTION COVER SHEET</b> <i>Name of Filing Party:</i> D002 - RHODES TROY	
<i>Name, Address, and Telephone No. of Attorney or Party If Not Represented.</i> KAREN FARLEY 2501 20TH PLACE SOUTH, STE 300 BIRMINGHAM, AL 35223 Attorney Bar No    FAR035		<input type="checkbox"/> Oral Arguments Requested	

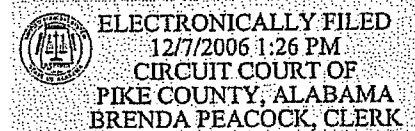
**TYPE OF MOTION**

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. <input type="checkbox"/> Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00) Renewed Dispositive Motion(Summary Judgment, <input type="checkbox"/> Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50.00)  <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees  <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input checked="" type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship <input type="checkbox"/>	Date: 12/7/2006 1:24:55 PM	Signature of Attorney or Party: /s/ KAREN FARLEY
---	-------------------------------	---

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV-06-246

---

DEFENDANT TROY RHODES' MOTION TO DISMISS

---

COMES NOW the Defendant, Troy Rhodes, pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant Troy Rhodes in the Plaintiffs' complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant Troy Rhodes shows unto the Court as follows:

1. On or about September 22, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed suit in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. (hereinafter referred to as "GAB Robins") and Troy Rhodes. Plaintiffs allege in their Complaint that at all times material thereto, Troy Rhodes was an agent or employee of Defendant GAB Robins North America, Inc. Defendant Troy Rhodes was served by certified mail on November 8, 2006.
2. The Complaint sets forth various causes of action, including the following:
  - a. Breach of Contract;

- b. Fraudulent Misrepresentation;
- c. Fraudulent Suppression; and
- d. Bad Faith.

3. Specifically, in the Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contract with Defendant, GAB Robins, by and through its alleged agent or employee, Defendant Troy Rhodes. The Complaint alleges further that said agreement contained terms, by which Defendant GAB Robins, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Complaint alleges further that by the terms of said agreement, Defendant GAB Robins, by and through its agent or employee Troy Rhodes, allegedly agreed to pay for damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins, through its alleged agent Troy Rhodes of the damage to said property.
5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiff that Defendant GAB Robins had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.

6. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). Additionally, Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of GAB Robins, North America, Inc. does not provide insurance benefits to any individual or entity. GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Further, to the extent that Defendant Troy Rhodes is alleged to be an agent or employee of GAB Robins North America, Inc., he does not underwrite or issue insurance benefits on behalf of GAB Robins North America, Inc.
7. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression and bad faith against Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc. are due to be dismissed for failure to state a claim upon which relief can be granted. As Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc., does not, in such a capacity underwrite insurance policies, Defendant Troy Rhodes could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim or fraud in the making of an insurance contract against Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc.

WHEREFORE, PREMISES CONSIDERED, Defendant Troy Rhodes respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs against Defendant Troy Rhodes pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 7th day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc. and Troy Rhodes

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North,  
Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

Facsimile: 205-967-2380

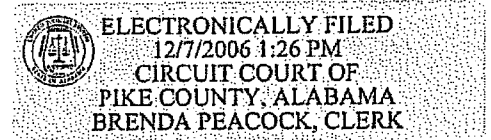
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 7th day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

s/Karen D. Farley  
Of Counsel



## **EXHIBIT A**

---

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV06-246

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AFFIDAVIT OF THOMAS SANTANGELO, ESQUIRE

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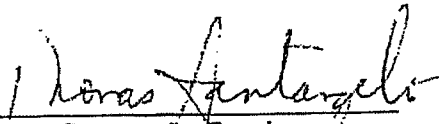
STATE OF NEW JERSEY)

COUNTY OF MORRIS)

Before me, the undersigned authority, a Notary Public in and for said County and in said State, personally appeared Thomas Santangelo, Deputy General Counsel for GAB Robins North America, Inc. and after first being duly sworn, testified as follows:

1. My name is Thomas Santangelo and I am over the age of nineteen (19) years. I am Deputy General Counsel for GAB Robins North America, Inc. and was so at all times relevant to the above-styled lawsuit.
2. GAB Robins North America, Inc.'s headquarters is located in Parsippany, New Jersey. GAB Robins North America, Inc. is not an insurance company or an insurer. It does not underwrite and issue insurance policies. GAB Robins North America, Inc. provides services for loss adjusting, appraisals and third party administration of claims, but is not an insurer.
3. I have personal knowledge of the foregoing.

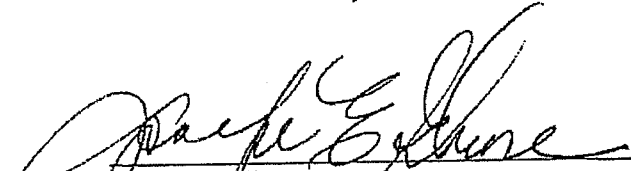
Further Affiant saith not.

  
Thomas Santangelo, Esquire

STATE OF NEW JERSEY  
COUNTY OF MORRIS

Sworn to and subscribed before me on this 1st day of November,  
2006.

(Seal)

  
Notary Public  
My commission expires:

JOCELYN E GILMORE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 2008



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: KAREN FARLEY  
kfarley@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following matter was FILED on 12/7/2006 1:26:25 PM

D002 RHODES TROY

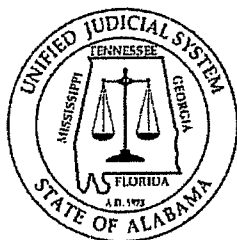
MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Attorney: FARLEY KAREN DIANNE]

Notice Date: 12/7/2006 1:26:25 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: HILB, ROGAL & HOBBS WHOLESAL (PRO SE)  
CORPORATION SERVICE CO  
2711 CENTERVILLE RD/400  
WILMINGTON, DE 19808

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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: KIRKLIN & COMPANY, LLC (PRO SE)  
2711 CENTERVILLE RD  
STE. 400  
WILMINGTON, DE 19808

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brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: RHODES TROY (PRO SE)  
%GAB ROBINS NORTH AMERICA  
150 S. PERRY ST.  
MONTGOMERY, AL 36104

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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: RSUI GROUP, INC (PRO SE)  
% CORPORATION TRUST CO  
1209 ORANGE ST  
WILMINGTON, DE 19801

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PIKE COUNTY, ALABAMA  
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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## NOTICE OF ELECTRONIC FILING

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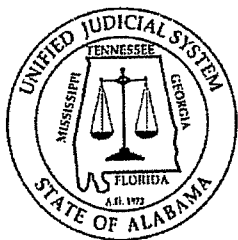
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TROY, AL 36340

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brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: CERVERA N J  
ncervera@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
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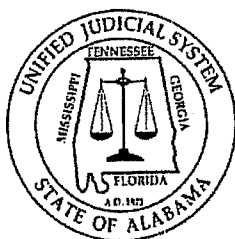
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## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

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brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: LLOYD JAMES S  
jlloyd@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

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[Attorney: FARLEY KAREN DIANNE]

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120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

AVSO352

CASE: CV 2006 000246.00  
JUDGE: ROBERT W BARRALABAMA JUDICIAL DATA CENTER  
CASE ACTION SUMMARY CONTINUATION  
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF PIKE COUNTY

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
FILED: 09/22/2006 TYPE: BAD FAITH/FRAUD/MISR TYPE TRIAL: JURY

TRACK:

\*\*\*\*\*  
DATE1: CA: CA DATE:  
DATE2: AMT: \$ .00 PAYMENT: \*\*\*\*\*

10.10.06 Not to Cervera/Baker- D001 s/d on 10/3/06.

11.2.06 Δ GAB Robins Mot to Dismiss

11.6/06 The Plaintiff shall respond to Defendant's Motion to Dismiss  
within thirty (30) days. Robert Barr Circuit Judge  
cc: Cervera/Baker, Lloyd/Barley

11.6.06 It's 1st Amended Complaint

11.7.06 JPC to D003-D005 by cert mail.

11.7.06 JPC returned to D003 @ new address.

11.14.06 Not to Cervera/Baker- D002 s/d on 11.8.06

11.14.06 Not to Cervera/Baker- D004 s/d on 11.10.06

11.20.06 Not to Cervera/Baker- D005 s/d on 11.10.06

11.20.06 Not to Cervera/Baker- D003 s/d on 11/13/06

12.5.06 Δ GAB Robins 2nd Motion to Dismiss

12.5.06 It's Resp. to Δ's Mot to Dismiss.

12/7/06 Defendant's Motion to Dismiss is denied.  
cc: Cervera/Baker, Lloyd/Barley Robert Barr Circuit Judge

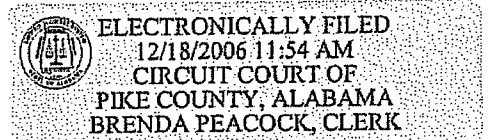
12.7.06 Δ Gray Rhodes' Mot to Dismiss.

12.7.06 Docket for 2.5.07 to Cervera/Baker Lloyd/Barley, D003, D004 &amp; D005.

12/8/06 Defendant Rhodes' Motion to Dismiss is denied.

cc: Cervera/Baker, Lloyd/Barley Robert Barr Circuit Judge

JAS 09/29/2006



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )

Defendants. )

---

ANSWER OF DEFENDANT GAB ROBINS NORTH AMERICA, INC.

---

COMES NOW the Defendant, GAB Robins, North America, Inc., (hereinafter referred to as "GAB Robins") and for Answer to the Complaint and each count and paragraph thereof and Plaintiffs' First Amended Complaint and each count and paragraph thereof, sets down and assigns the following separate and several defenses, without waiving any substantive or procedural deficiencies in the Plaintiffs' Complaint or Amended Complaint:

**STATEMENT OF THE PARTIES**

1. Upon information and belief, GAB Robins admits the allegations of this paragraph.
2. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 2, therefore, the allegations are denied and Defendant demands strict proof thereof.

3. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.

**COUNT ONE**

4. The allegations of paragraph 4 are denied and Defendant demands strict proof thereof.
5. Defendant GAB Robins denies the allegations of paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.
6. Defendant GAB Robins denies the allegations of paragraph 6 of the Plaintiffs' Complaint and demands strict proof thereof.
7. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.
8. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 8, therefore, the allegations are denied and Defendant demands strict proof thereof.
9. Defendant GAB Robins denies the material allegations of paragraph 9 and demands strict proof thereof.
10. Defendant GAB Robins denies that as a proximate consequence of a breach of contract that the plaintiffs have not been able to repair property and therefore unable to rent or lease the aforescribed property and demands strict proof thereof. Defendant GAB Robins is without sufficient information to admit or deny the balance of the allegations set forth in paragraph 10 and, therefore, denies the same and demands strict proof thereof.

**COUNT TWO**

11. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
12. Defendant GAB Robins denies the material allegations of paragraph 12 and demands strict proof thereof.
13. Defendant GAB Robins denies the material allegations of paragraph 13 and demands strict proof thereof.
14. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 14 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

15. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
16. Defendant GAB Robins denies the material allegations of paragraph 16 and demands strict proof thereof.
17. Defendant GAB Robins denies the material allegations of paragraph 17 and demands strict proof thereof.

**COUNT FOUR**

18. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
19. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 19 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

20. Defendant GAB Robins denies the material allegations of paragraph 20 and demands strict proof thereof.
21. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 21 and, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant GAB Robins denies the material allegations of paragraph 22 and demands strict proof thereof.
23. Defendant GAB Robins denies the allegations of Plaintiffs' Complaint, contests damages and demands strict proof thereof of all claims.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 1 of the Plaintiffs' First Amended Complaint and, therefore the allegations are denied and Defendant demands strict proof thereof.
2. The allegations of paragraph 2 are admitted.
3. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 3, therefore, the allegations are denied and Defendant demands strict proof thereof.
4. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 4, therefore, the allegations are denied and Defendant demands strict proof thereof.
5. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 5, therefore, the allegations are denied and Defendant demands strict proof thereof.

6. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 6, therefore, the allegations are denied and Defendant demands strict proof thereof.
7. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT ONE**

8. The allegations of paragraph 8 are denied and Defendant demands strict proof thereof.
9. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 9, therefore, the allegations are denied and Defendant demands strict proof thereof.
10. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 10, therefore, the allegations are denied and Defendant demands strict proof thereof.
11. Upon information and belief, GAB Robins admits the allegations of this paragraph.
12. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 12, therefore, the allegations are denied and Defendant demands strict proof thereof.
13. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 13, therefore, the allegations are denied and Defendant demands strict proof thereof.

14. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 14, therefore, the allegations are denied and Defendant demands strict proof thereof.
15. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 15, therefore, the allegations are denied and Defendant demands strict proof thereof.
16. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 16, therefore, the allegations are denied and Defendant demands strict proof thereof.
17. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 17, therefore, the allegations are denied and Defendant demands strict proof thereof.
18. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 18, therefore, the allegations are denied and Defendant demands strict proof thereof.
19. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 19, therefore, the allegations are denied and Defendant demands strict proof thereof.
20. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 20, therefore, the allegations are denied and Defendant demands strict proof thereof.

21. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 21, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant GAB Robins denies the material allegations of paragraph 22 and demands strict proof thereof.

**COUNT TWO**

23. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 23, therefore, the allegations are denied and Defendant demands strict proof thereof.
24. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 24, therefore, the allegations are denied and Defendant demands strict proof thereof.
25. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 25, therefore, the allegations are denied and Defendant demands strict proof thereof.
26. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 26, therefore, the allegations are denied and Defendant demands strict proof thereof.
27. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 27, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

28. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 28, therefore, the allegations are denied and Defendant demands strict proof thereof.
29. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 29, therefore, the allegations are denied and Defendant demands strict proof thereof.
30. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 30, therefore, the allegations are denied and Defendant demands strict proof thereof.
31. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 31, therefore, the allegations are denied and Defendant demands strict proof thereof.
32. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 32, therefore, the allegations are denied and Defendant demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint and the Amended Complaint fails to state a cause of action upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint and the Amended Complaint against Defendant GAB Robins are untrue.

**THIRD AFFIRMATIVE DEFENSE**

The damages asserted on behalf of the Plaintiffs are the result of an intervening and/or superseding cause.

**FOURTH AFFIRMATIVE DEFENSE**

The claims against Defendant GAB Robins are barred by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of waiver, estoppel, release, accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

Imposing damages for mental anguish or emotional distress is unconstitutional under the United States Constitution and the Constitution of the State of Alabama. Current Alabama procedures relative to damages for mental anguish and emotional distress provide no objective, logical or reasonable standards or criteria to govern the award or the amount of such damages; therefore, this Defendant is denied due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I Sections 1, 6, 10, 11, 13, and 22 of the Alabama Constitution, separately and severally.

**SEVENTH AFFIRMATIVE DEFENSE**

There are no procedural safeguards for the imposition of damages for emotional distress and mental anguish. Therefore, because such damages are left to the standardless discretion of the jury, any such award would be improper and unconstitutional.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable insurance laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

This Defendant denies they are guilty of conduct for which punitive damages could or should be awarded and denies Plaintiffs have produced clear and convincing evidence to support or sustain an award of punitive damages against this Defendant.

**TENTH AFFIRMATIVE DEFENSE**

Your Defendant contests damages alleged in all Counts and paragraphs of the Complaint and the Amended Complaint and demands strict proof thereof. Specifically with regard to the claim for punitive damages, your Defendant pleads the following punitive damage defenses:

1. Plaintiffs' claim of punitive damages violates the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, Section 6 of the Constitution of Alabama, on the following grounds:

(a) It is violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United Sates Constitution to impose punitive damages, which are penal in nature, against a civil Defendant upon the Plaintiffs' satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Defendant, which thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards, or provide vague or insufficient standards, for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(g) The procedures pursuant to which punitive damages are awarded fail to require that an award of punitive damages be proportion, or bear a reasonable relationship, to the actual harm incurred;

(h) The procedures pursuant to which punitive damages are awarded fail to provide mitigating factors for the jury's consideration in awarding punitive damages.

2. Plaintiffs' claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of Alabama on the following grounds:

(a) It is a violation of the due process clause to impose punitive damages, which are penal in nature, upon a civil Defendant upon the Plaintiffs' satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the Defendant;

(c) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and

(e) The award of the punitive damages in this case constitutes a deprivation of property without due process of law.

3. Plaintiffs' attempt to impose punitive or extra contractual damages on this Defendant, on the basis of vicarious liability for the conduct by others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

4. The award of punitive damages to the Plaintiffs in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

5. The award of punitive damages against the Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article I, Section 22 of the Constitution of Alabama.

6. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the amount established by the legislature under **Alabama Code, Section 27-1-17 (1975)**, in violation of the Due Process Clause of the Fifth and

Fourteenth Amendments of the United States Constitution and Article I, Section 6, of the Alabama Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

Awarding punitive damages in this case against this Defendant would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and unreasonable burden on interstate commerce.

**TWELFTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would have a chilling effect upon the Defendant's right to open access to the courts of this state, in violation of the United States Constitution and Alabama Constitution, separately and severally.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would violate the Contracts Clause of Article I, Section 10 of the United States Constitution, as an award of punitive damages would impair the contractual obligations arising out of the transaction between the Plaintiff and this Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Based upon Alabama procedures relative to punitive damages, which provide no objective, logical, reasonable standards or criteria which govern an award, and the amount of the award, of punitive damages, this Defendant are denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Sections 1, 6 and 22 of the Alabama Constitution, separately and severally

**FIFTEENTH AFFIRMATIVE DEFENSE**

The demand for punitive damages in this case is subject to those limitations established by the Alabama Legislature set forth in Sections 6-11-21 of the Alabama Code. The Alabama Supreme Court's action in abolishing the legislatively created cap on punitive damages was unconstitutional. Under the Constitutions of the United States and the State of Alabama, the Alabama Supreme Court cannot abolish the cap created by the legislature as to punitive damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' own actions or inactions caused or contributed to their damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This Defendant breached no duty owed to the Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the merger doctrine and the parole evidence rule.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

The insurance transactions at issue in this case were arms-length transactions.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Defendant GAB Robins has not breached the contract at issue in this case.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

An insurance adjuster, not being a party to the insurance contract cannot be held liable for bad faith. Thus, any claims against GAB Robins are due to be dismissed.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Defendant GAB Robins owed no duty to the Plaintiffs.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

The Complaint and Amended Complaint contain a misjoinder of parties and is due to be dismissed.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Defendant GAB Robins pleads the general issue and states they are not guilty of the matters charged.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Defendant, GAB Robins pleads any other matter constituting an avoidance or affirmative defense not specifically set forth herein and hereby reserves the right to amend this Answer to include any such avoidance or affirmative defense.

Respectfully submitted this the 18<sup>th</sup> day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

**OF COUNSEL:**

LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223  
Telephone: 205-967-8822  
Facsimile: 205-967-2380  
Email: [jllloyd@lgwpc.com](mailto:jllloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 18<sup>th</sup> day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

I hereby certify that a copy of the above and foregoing has been served on the following parties by placing a copy of the same in the United States Mail, properly addressed and postage prepaid on this the 18<sup>th</sup> day of December, 2006:

HILB, ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.  
Corporation Service Co.  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

KIRKLIN & COMPANY, LLC  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

RSUI GROUP, INC.  
C/O Corporation Trust Co.  
1209 Orange Street  
Wilmington, Delaware 19801

s/Karen D. Farley  
Of Counsel

**AlaFile E-Notice**

55-CV-2006-000246.00

To: KAREN FARLEY  
kfarley@lgwpc.com

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**NOTICE OF ELECTRONIC FILING**

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

**DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL**  
**55-CV-2006-000246.00**

The following answer was FILED on 12/18/2006 11:54:57 AM

Notice Date: 12/18/2006 11:54:57 AM

**BRENDA PEACOCK**  
**CIRCUIT COURT CLERK**  
**PIKE COUNTY, ALABAMA**  
**120 WEST CHURCH STREET**  
**TROY, AL 36340**

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: HILB, ROGAL & HOBBS WHOLESAL (PRO SE)  
CORPORATION SERVICE CO  
2711 CENTERVILLE RD/400  
WILMINGTON, DE 19808

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**NOTICE OF ELECTRONIC FILING**

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

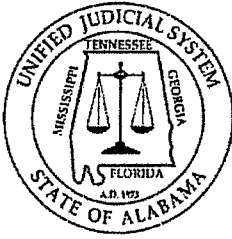
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To: KIRKLIN & COMPANY, LLC (PRO SE)  
2711 CENTERVILLE RD  
STE. 400  
WILMINGTON, DE 19808

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

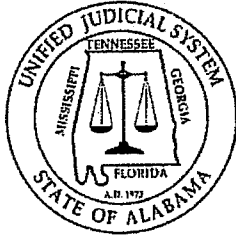
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

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55-CV-2006-000246.00

To: RSUI GROUP, INC (PRO SE)  
% CORPORATION TRUST CO  
1209 ORANGE ST  
WILMINGTON, DE 19801

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

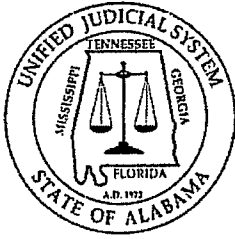
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**TROY, AL 36340**

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: CERVERA N J  
ncervera@troycable.net

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

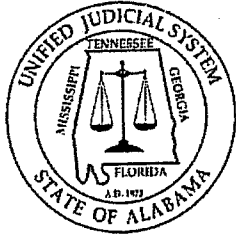
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: FARLEY KAREN DIANNE  
kfarley@gwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

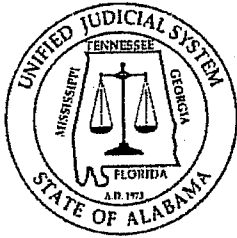
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: LLOYD JAMES S  
jlloyd@lgwpc.com

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**NOTICE OF ELECTRONIC FILING**

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

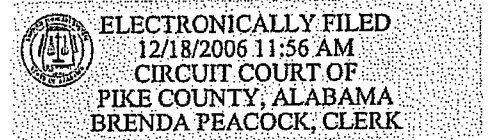
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**120 WEST CHURCH STREET**  
**TROY, AL 36340**

334-566-4622  
brenda.peacock@alacourt.gov



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )

Defendants. )

---

ANSWER OF DEFENDANT TROY RHOADES

---

COMES NOW the Defendant, Troy Rhoades (incorrectly identified as "Troy Rhodes") and for answer to the Complaint and each count and paragraph thereof and Plaintiffs' First Amended Complaint and each count and paragraph thereof, sets down and assigns the following separate and several defenses, without waiving any substantive or procedural deficiencies in the Plaintiffs' Complaint or Amended Complaint:

**STATEMENT OF THE PARTIES**

1. Upon information and belief, Troy Rhoades admits the allegations of this paragraph.
2. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 2, therefore, the allegations are denied and Defendant demands strict proof thereof.

3. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.

**COUNT ONE**

4. The allegations of paragraph 4 are denied and Defendant demands strict proof thereof.
5. Defendant Troy Rhoades denies the allegations of paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.
6. Defendant Troy Rhoades denies the allegations of paragraph 6 of the Plaintiffs' Complaint and demands strict proof thereof.
7. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.
8. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 8, therefore, the allegations are denied and Defendant demands strict proof thereof.
9. Defendant Troy Rhoades denies the material allegations of paragraph 9 and demands strict proof thereof.
10. Defendant Troy Rhoades denies that as a proximate consequence of a breach of contract that the plaintiffs have not been able to repair property and therefore unable to rent or lease the aforescribed property and demands strict proof thereof. Defendant Troy Rhoades is without sufficient information to admit or deny the balance of the allegations set forth in paragraph 10 and, therefore, denies the same and demands strict proof thereof.

**COUNT TWO**

11. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
12. Defendant Troy Rhoades denies the material allegations of paragraph 12 and demands strict proof thereof.
13. Defendant Troy Rhoades denies the material allegations of paragraph 13 and demands strict proof thereof.
14. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 14 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

15. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
16. Defendant Troy Rhoades denies the material allegations of paragraph 16 and demands strict proof thereof.
17. Defendant Troy Rhoades denies the material allegations of paragraph 17 and demands strict proof thereof.

**COUNT FOUR**

18. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
19. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 19 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

20. Defendant Troy Rhoades denies the material allegations of paragraph 20 and demands strict proof thereof.
21. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 21 and, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant Troy Rhoades denies the material allegations of paragraph 22 and demands strict proof thereof.
23. Defendant Troy Rhoades denies the allegations of Plaintiffs' Complaint, contests damages and demands strict proof thereof of all claims.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 1 of the Plaintiffs' First Amended Complaint and, therefore the allegations are denied and Defendant demands strict proof thereof.
2. The allegations of paragraph 2 are admitted.
3. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 3, therefore, the allegations are denied and Defendant demands strict proof thereof.
4. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 4, therefore, the allegations are denied and Defendant demands strict proof thereof.
5. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 5, therefore, the allegations are denied and Defendant demands strict proof thereof.

6. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 6, therefore, the allegations are denied and Defendant demands strict proof thereof.
7. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT ONE**

8. The allegations of paragraph 8 are denied and Defendant demands strict proof thereof.
9. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 9, therefore, the allegations are denied and Defendant demands strict proof thereof.
10. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 10, therefore, the allegations are denied and Defendant demands strict proof thereof.
11. Upon information and belief, Troy Rhoades admits the allegations of this paragraph.
12. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 12, therefore, the allegations are denied and Defendant demands strict proof thereof.
13. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 13, therefore, the allegations are denied and Defendant demands strict proof thereof.

14. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 14, therefore, the allegations are denied and Defendant demands strict proof thereof.
15. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 15, therefore, the allegations are denied and Defendant demands strict proof thereof.
16. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 16, therefore, the allegations are denied and Defendant demands strict proof thereof.
17. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 17, therefore, the allegations are denied and Defendant demands strict proof thereof.
18. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 18, therefore, the allegations are denied and Defendant demands strict proof thereof.
19. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 19, therefore, the allegations are denied and Defendant demands strict proof thereof.
20. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 20, therefore, the allegations are denied and Defendant demands strict proof thereof.

21. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 21, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant Troy Rhoades denies the material allegations of paragraph 22 and demands strict proof thereof.

**COUNT TWO**

23. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 23, therefore, the allegations are denied and Defendant demands strict proof thereof.
24. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 24, therefore, the allegations are denied and Defendant demands strict proof thereof.
25. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 25, therefore, the allegations are denied and Defendant demands strict proof thereof.
26. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 26, therefore, the allegations are denied and Defendant demands strict proof thereof.
27. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 27, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

28. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 28, therefore, the allegations are denied and Defendant demands strict proof thereof.

29. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 29, therefore, the allegations are denied and Defendant demands strict proof thereof.

30. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 30, therefore, the allegations are denied and Defendant demands strict proof thereof.

31. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 31, therefore, the allegations are denied and Defendant demands strict proof thereof.

32. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 32, therefore, the allegations are denied and Defendant demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint and the Amended Complaint fails to state a cause of action upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint and the Amended Complaint against Defendant Troy Rhoades are untrue.

**THIRD AFFIRMATIVE DEFENSE**

The damages asserted on behalf of the Plaintiffs are the result of an intervening and/or superseding cause.

**FOURTH AFFIRMATIVE DEFENSE**

The claims against Defendant Troy Rhoades are barred by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of waiver, estoppel, release, accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

Imposing damages for mental anguish or emotional distress is unconstitutional under the United States Constitution and the Constitution of the State of Alabama. Current Alabama procedures relative to damages for mental anguish and emotional distress provide no objective, logical or reasonable standards or criteria to govern the award or the amount of such damages; therefore, this Defendant is denied due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I Sections 1, 6, 10, 11, 13, and 22 of the Alabama Constitution, separately and severally.

**SEVENTH AFFIRMATIVE DEFENSE**

There are no procedural safeguards for the imposition of damages for emotional distress and mental anguish. Therefore, because such damages are left to the standardless discretion of the jury, any such award would be improper and unconstitutional.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable insurance laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

This Defendant denies he is guilty of conduct for which punitive damages could or should be awarded and denies Plaintiffs have produced clear and convincing evidence to support or sustain an award of punitive damages against this Defendant.

**TENTH AFFIRMATIVE DEFENSE**

Your Defendant contests damages alleged in all Counts and paragraphs of the Complaint and the Amended Complaint and demands strict proof thereof. Specifically with regard to the claim for punitive damages, your Defendant pleads the following punitive damage defenses:

1. Plaintiffs' claim of punitive damages violates the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, Section 6 of the Constitution of Alabama, on the following grounds:

(a) It is violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United Sates Constitution to impose punitive damages, which are penal in nature, against a civil Defendant upon the Plaintiffs' satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Defendant, which thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards, or provide vague or insufficient standards, for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(g) The procedures pursuant to which punitive damages are awarded fail to require that an award of punitive damages be proportion, or bear a reasonable relationship, to the actual harm incurred;

(h) The procedures pursuant to which punitive damages are awarded fail to provide mitigating factors for the jury's consideration in awarding punitive damages.

2. Plaintiffs' claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of Alabama on the following grounds:

(a) It is a violation of the due process clause to impose punitive damages, which are penal in nature, upon a civil Defendant upon the Plaintiffs' satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the Defendant;

(c) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and

(e) The award of the punitive damages in this case constitutes a deprivation of property without due process of law.

3. Plaintiffs' attempt to impose punitive or extra contractual damages on this Defendant, on the basis of vicarious liability for the conduct by others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

4. The award of punitive damages to the Plaintiffs in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

5. The award of punitive damages against the Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article I, Section 22 of the Constitution of Alabama.

6. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the amount established by the legislature under Alabama Code, Section 27-1-17 (1975), in violation of the Due Process Clause of the Fifth and

Fourteenth Amendments of the United States Constitution and Article I, Section 6, of the Alabama Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

Awarding punitive damages in this case against this Defendant would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and unreasonable burden on interstate commerce.

**TWELFTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would have a chilling effect upon the Defendant's right to open access to the courts of this state, in violation of the United States Constitution and Alabama Constitution, separately and severally.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would violate the Contracts Clause of Article I, Section 10 of the United States Constitution, as an award of punitive damages would impair the contractual obligations arising out of the transaction between the Plaintiff and this Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Based upon Alabama procedures relative to punitive damages, which provide no objective, logical, reasonable standards or criteria which govern an award, and the amount of the award, of punitive damages, this Defendant are denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Sections 1, 6 and 22 of the Alabama Constitution, separately and severally.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The demand for punitive damages in this case is subject to those limitations established by the Alabama Legislature set forth in Sections 6-11-21 of the Alabama Code. The Alabama Supreme Court's action in abolishing the legislatively created cap on punitive damages was unconstitutional. Under the Constitutions of the United States and the State of Alabama, the Alabama Supreme Court cannot abolish the cap created by the legislature as to punitive damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' own actions or inactions caused or contributed to their damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This Defendant breached no duty owed to the Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the merger doctrine and the parole evidence rule.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

The insurance transactions at issue in this case were arms-length transactions.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades has not breached the contract at issue in this case.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

An insurance adjuster, not being a party to the insurance contract cannot be held liable for bad faith. Thus, any claims against Troy Rhoades are due to be dismissed.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades owed no duty to the Plaintiffs.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

The Complaint and Amended Complaint contain a misjoinder of parties and is due to be dismissed.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades pleads the general issue and states he is not guilty of the matters charged.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Defendant, Troy Rhoades pleads any other matter constituting an avoidance or affirmative defense not specifically set forth herein and hereby reserves the right to amend this Answer to include any such avoidance or affirmative defense.

Respectfully submitted this the 18<sup>th</sup> day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins

North America, Inc. and Troy Rhoades

**OF COUNSEL:**

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North, Suite 300

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Telephone: 205-967-8822

Facsimile: 205-967-2380

Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)

[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 18<sup>th</sup> day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

I hereby certify that a copy of the above and foregoing has been served on the following parties by placing a copy of the same in the United States Mail, properly addressed and postage prepaid on this the 18<sup>th</sup> day of December, 2006:

HILB, ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.  
Corporation Service Co.  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

KIRKLIN & COMPANY, LLC  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

RSUI GROUP, INC.  
C/O Corporation Trust Co.  
1209 Orange Street  
Wilmington, Delaware 19801

s/Karen D. Farley  
Of Counsel



## AlaFile E-Notice

55-CV-2006-000246.00

To: KAREN FARLEY  
kfarley@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following answer was FILED on 12/18/2006 11:56:12 AM

Notice Date: 12/18/2006 11:56:12 AM

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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

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CORPORATION SERVICE CO  
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WILMINGTON, DE 19808

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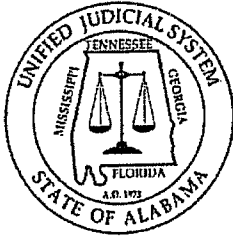
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To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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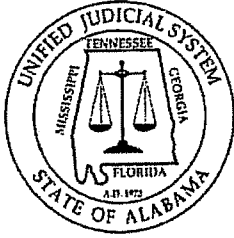
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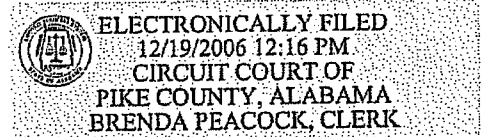
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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,	)	
d/b/a HISTORICAL RENTALS, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.: CV-06-246
	)	
GAB ROBINS NORTH AMERICA,	)	
INC., TROY RHOADES, HILB,	)	
ROGAL & HOBBS WHOLESALE	)	
INSURANCE SERVICES, INC.,	)	
KIRKLIN & CO., LLC, A/K/A	)	
HRH/KIRKLIN & CO., LLC and RSUI	)	
GROUP, INC.	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF DISCOVERY

TO: Clerk of Court, Pike County Circuit Court

Please take notice that Defendants, GAB Robins North America, Inc. and Troy Rhoades have served upon counsel of record, the following:

Notice of Taking Deposition of Donnie Hughes  
Notice of Taking Deposition of Metra Hughes

Dated: December 19, 2006

s/Karen D. Farley

JAMES S. LLOYD(LLO004)  
KAREN D. FARLEY(FAR035)  
Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223  
Telephone: 205-967-8822  
Facsimile: 205-967-2380  
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties by electronic transmission using the AlaFile electronic court filing system and/or by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the \_\_\_\_\_ day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081

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RSUI GROUP, INC.  
C/O Corporation Trust Co.  
1209 Orange Street  
Wilmington, Delaware 19801

s/Karen D. Farley  
Of Counsel



## AlaFile E-Notice

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To: KAREN FARLEY  
kfarley@lgwpc.com

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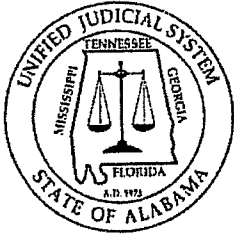
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1209 ORANGE ST  
WILMINGTON, DE 19801

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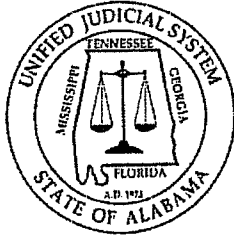
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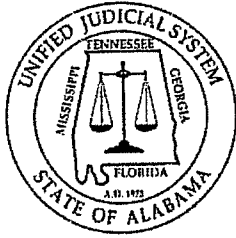
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kfarley@lgwpc.com

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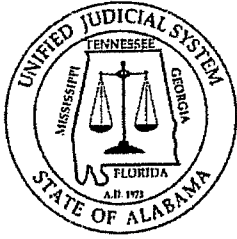
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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC ,

Plaintiffs,

vs

GAB ROBINS NORTH AMERICA, INC.,  
et al ,

Defendants.

\*  
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NO. CV-2006-246-RWB

**ANSWER OF RSUI INDEMNITY COMPANY TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

COMES NOW Defendant RSUI Indemnity Company (hereinafter "RSUI"), and in response to Plaintiff's First Amended Complaint and each cause of action contained therein states as follows:

**FIRST DEFENSE**

Responding to the First Amended Complaint paragraph by paragraph, and reserving all defenses, Defendant states as follows:

**STATEMENT OF THE PARTIES**

1 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same

2 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

3 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 3 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

4 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

5 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

6 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

7 RSUI admits that it is a Delaware corporation and doing business in Alabama. Defendant denies the remaining allegations contained in paragraph 7 of Plaintiff's First Amended Complaint.

#### COUNT 1

8 Defendant reasserts and incorporates its responses to paragraphs 1 - 7 as set forth above.

9 Defendant admits that an insurance policy effective April 1, 2004, existed which provided insurance to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's First Amended Complaint.

10 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained paragraph 10 of Plaintiff's First Amended Complaint.

11 Defendants admits that GAB was the adjusting company for Plaintiff's claims under said policy. Defendant denies the remaining allegations contained paragraph 11 of Plaintiff's First Amended Complaint.

12 Defendant admits that a named storm made landfall on September 16, 2004. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 12 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

13 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 13 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

14 Denied

15 Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count One of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner.

#### COUNT 2

16 - 19 The allegations contained in paragraphs 16 - 19, including the last unnumbered paragraph of Count Two, are not directed to this Defendant; thus, no response is required. To the

extent a response is required, Defendant denies same, and denies that Plaintiff is entitled to recover from it in any manner

**COUNT 3**

20. Defendant reasserts and incorporates its responses to paragraphs 1 - 19 as set forth above

21. Defendant admits that Plaintiffs made a claim with agents of RSUI. Defendant denies the remaining allegations contained in paragraph 21 of Plaintiff's First Amended Complaint

22. Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count Three of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

**COUNT 4**

23. Defendant reasserts and incorporates its responses to paragraphs 1 - 22 as set forth above

24. Defendant admits that Plaintiff reported damage to their property to an agent of Defendant RSUI. Defendant denies the remaining allegations contained in paragraph 24 of Plaintiff's First Amended Complaint

25. The allegations contained in paragraph 25 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required. To the extent a response is required, Defendant admits that Defendant GAB acted as an adjuster. Defendant denies the remaining allegations contained in paragraph 25 of Plaintiff's First Amended Complaint.

26 The allegations contained in paragraph 26 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required To the extent a response is required, Defendant denies same

27 Denied.

#### **COUNT 5**

28 Defendant reasserts and incorporates its responses to paragraphs 1 - 27 as set forth above

29 Defendant admits that Plaintiff's reported damage to their property to Defendant GAB Defendant denies the remaining allegations contained in paragraph 29 of Plaintiff's First Amended Complaint.

30 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others Defendant denies the remaining allegations contained paragraph 30 of Plaintiff's First Amended Complaint.

31 Defendant admits Plaintiff's claims arising out of a date of loss of September 23, 2004, did not meet Plaintiff's deductible under the policy; therefore, no payment has been made.

32 Denied.

Defendant denies the allegations contained in the last unnumbered paragraph of Count Five of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

#### **FIRST DEFENSE**

RSUI committed no act that proximately caused or contributed to any damages sustained by Plaintiff

**SECOND DEFENSE**

The injuries and damages complained of herein resulted from the acts or omissions of persons or entities other than RSUI. Alternatively, said acts or omissions or persons or entities other than RSUI constitute an independent, superseding cause to the injuries and damages complained of herein; hence, Plaintiff ought not to recover.

**THIRD DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable Alabama statute.

**FOURTH DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable state or federal rules, regulations, or standards.

**FIFTH DEFENSE**

Each and every claim stated in Plaintiff's First Amended Complaint is barred in whole or in part by the applicable statute of limitations and/or the doctrine of laches.

**SIXTH DEFENSE**

RSUI is entitled to a set-off and credit for any and all sums paid to or on behalf of Plaintiff by any other party or collateral source as a result of or related to this lawsuit.

**SEVENTH DEFENSE**

RSUI pleads accord and satisfaction.

**EIGHTH DEFENSE**

RSUI pleads all applicable portions of policy of insurance issued by RSUI to Fraternal Property Management Association, policy number NHD332474 for the policy period April 1,

2004, through April 1, 2005 Said policy is attached hereto as Defendant RSUI's Exhibit "A" to its Answer herein

**NINTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

B. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of physical loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and the amount of physical loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1 pay its chosen appraiser; and
- 2 bear the other expenses of the appraisal and umpire equally

**TENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

C. Duties in the Event of Loss or Damage

- 1 You must see that the following are done in the event of loss or damage to Covered Property:
  - a Notify the police if a law may have been broken.
  - b Give us prompt notice of the loss or damage. Include a description of the property involved

- c As soon as possible, give us a description of how, when, and where the loss or damage occurred
- d Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such loss, for consideration in a settlement of the claim. However, we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a Covered Cause of Loss. This will not increase the Limit of Insurance. Also, if feasible, set damage to property aside and in the best possible order, for examination.
- e At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claim.
- f As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- g Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- h Cooperate with us in the investigation or settlement of the claim.

#### **ELEVENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97) which states that:

Loss Conditions:

F. Other Insurance:

- 1 You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Covered Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.

- 2 If there is other insurance covering the same loss or damage, other than that described in 1 above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage.

#### **TWELFTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

J Vacancy

2. Vacancy provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- a We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (1) vandalism;
- (2) sprinkler leakage, unless you have protected the system against freezing;
- (3) building glass breakage;
- (4) water damage;
- (5) theft; or
- (6) attempted theft.

#### **THIRTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

K Valuation:

- 2 If replacement cost is indicated in the Declarations as the method valuation we will determine the value of Covered Property in the event of loss or damage as follows:

- a. At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b through j below:
- j. The cost of repair or replacement does not include any increase costs attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### **FOURTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions under amount:**

- 1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss

- a. Ordinance or law

The enforcement of any ordinance or law:

- (1) regulating construction; use or repair of any property; or
- (2) requiring the tearing down of any property including the costs of removing its' debris

This exclusion, ordinance or law, applies whether the loss results from:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) the increased cost incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolishing of property or removal of its debris, following a direct physical loss or damage to that property.

#### **FIFTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions:**

- 2 We will not pay for loss or damage caused by or resulting from any of the following:

- d. (1) Wear and tear;  
(2) rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality and property that causes it to damage or destroy itself;

**SIXTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

C. Exclusions:

- 3 We will not pay for the loss or damage caused by or the resulting from any of the following 3a through 3c But if an excluded Cause of Loss that is listed in 3a. through 3c results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- c Faulty, inadequate or defective:

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

of part or all of any property own on off the described premises.

**SEVENTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

H. Deductible:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance The Deductible clause does not apply to Business Income

**EIGHTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Deductible Amounts:

\$10,000 Tenant vandalism.

**NINETEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Valuation:

Building: Replacement Cost – Agreed Amount; Contents: Replacement Cost, 90% Coinsurance

**TWENTIETH DEFENSE**

Insurance companies are the only defendant subjected to punitive damages under Alabama Law for breach of the implied duty of good faith which exists in every contract – thus creating a distinction that is under-inclusive and not rationally tailored to accomplish a legitimate state interest; wherefore, the imposition of punitive damages would violate the equal protection clause of the Fifth and Fourteenth Amendments of the United States Constitution and deprive RSUI of the right to equal protection under the law as provided in Article I, Section 1, 6 and 22 of the Alabama Constitution of 1901.

**TWENTY-FIRST DEFENSE**

The imposition of punitive damages against an insurance company for asserting non-frivolous legal defenses to an insurance claim violates the, "right of access to the Courts," and the, "right to seek assistance of counsel," as guaranteed by the First and Fourteenth Amendments

to the United States Constitution and Article I, Sections 1, 6, and 22 of the Alabama Constitution of 1901

#### **TWENTY-SECOND DEFENSE**

Plaintiffs have asserted tort claims that allow for the imposition of punitive damages in certain cases. The imposition of punitive damages in this case would violate the due process clause of Amendments V and XIV to the United States Constitution and Article I, Section 6 of the Alabama Constitution of 1901 because the imposition of punitive damages would violate this defendant's right to substantive due process.

#### **TWENTY-THIRD DEFENSE**

The imposition of punitive damages under Alabama law would violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and Articles 1, 6 and 22 of the Alabama Constitution, in each of the following ways:

- (a) Alabama law permits the imposition of unlimited punitive damages that are vastly disproportionate to any actual or compensatory injury, thereby violating the 14th Amendment of the U.S. Constitution
- (b) Disproportionate punitive damages constitute an arbitrary and capricious taking of property that is unjustified by any rational governmental interest, thereby violating the 5th and 14th Amendments of the U.S. Constitution
- (c) The award of any punitive damages without specific standards to guide the jury's discretion in determining the amount of damages is contrary to due process under the 14th Amendment of the U.S. Constitution.
- (d) Alabama does not provide a reasonable limit on the amount of any punitive damages award, thus violating the 14th Amendment of the U.S. Constitution
- (e) The substantive standards of liability under which punitive damages are sought in this case are ambiguous, subjective, and not reasonably ascertainable, and are thus "void for vagueness" under the 14th Amendment of the U.S. Constitution

- (f) Alabama fails to provide a clear, objective and consistent appellate standard for post-verdict review of punitive damages thus violating the 5th and 14th Amendments of the United States Constitution.
- (g) Alabama law permits civil punishment upon a standard of proof less than that required for the imposition of criminal sanctions
- (h) Alabama law permits joint and several punishment of defendants who are guilty of different acts and degrees of culpability
- (i) Alabama law permits multiple awards of punitive damages for the same alleged act or omission

#### **TWENTY-FOURTH DEFENSE**

Alabama's punitive damages law violates the Fifth Amendment guarantee against self-incrimination under the U.S Constitution because said claim is penal in nature, while defendant is required to disclose documents and/or other evidence against its interest under the rules of discovery and evidence.

#### **TWENTY-FIFTH DEFENSE**

The award of any damages under the allegations of this complaint would violate the prohibition against laws that impair the obligations of contracts in violation of the Contract Clause, Article I Sec 10 cl 1, of the United States Constitution and Article 1, Section 22, of the Constitution of Alabama, in that the claims are in derogation express terms contained in the insurance policy made basis of this action and contractually agreed upon by defendant and the named insured

#### **TWENTY-SIXTH DEFENSE**

Pursuant to ALA. CODE § 6-11-21, there is a cap on the amount of punitive damages recoverable in this action.

**TWENTY-SEVENTH DEFENSE**

Pursuant to ALA CODE § 6-11-21, RSUI is not liable for any portion of any award of punitive damages wherein there have been no express findings that RSUI engaged in conduct as defined in ALA CODE § 6-11-20. RSUI is not jointly and severally liable to Plaintiffs for any award of punitive damages based upon the conduct of any other defendant.

**TWENTY-EIGHTH DEFENSE**

The imposition of punitive damages against RSUI in an amount exceeding any actual and potential harm by an excessive and/or unconstitutional ratio violates RSUI's due process rights as guaranteed by the United States Constitution.

**TWENTY-NINTH DEFENSE**

The imposition of punitive damages under Alabama's current system fails to provide fair notice to RSUI that the alleged wrongful conduct could subject RSUI to punishment and also fails to provide fair notice of the severity of the punishment that the State could impose through an award of punitive damages. This lack of fair notice violates RSUI's due process rights, both procedural and substantive, as guaranteed by the United States Constitution.

**THIRTIETH DEFENSE**

The imposition of punitive damages against RSUI in this case, if any, violates RSUI's due process rights as guaranteed by the United States Constitution because the award of punitive damages is excessive in light of the following criteria: (1) the degree of reprehensibility of the RSUI's alleged wrongful conduct; (2) the disparity between the harm or potential harm and the punitive damage award; and (3) the difference between the punitive damage award and the civil penalties authorized or imposed in other cases.

**THIRTY-FIRST DEFENSE**

The procedure for determining punitive damages specified under Alabama law violates RSUI's right to due process, and otherwise violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, because the procedure for determining punitive damages under Alabama law does not provide meaningful guidance to a jury in the determination of an appropriate punitive damages award and does not constrain a jury or otherwise reduce the risk of an arbitrary or grossly excessive punitive damages verdict

**THIRTY-SECOND DEFENSE**

Any award of punitive damages in this case would violate the Eighth Amendment to the U.S. Constitution as an excessive fine. Also, any award of punitive damages in this case would violate Article I, § 15 of the Alabama Constitution as an excessive fine.

**THIRTY-THIRD DEFENSE**

The imposition of punitive damages violates the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Article I, §§ 6 and 15 of the Constitution of Alabama by failing to provide clear, distinct, and adequate guidelines as to each of the following: (a) the general standards applicable to such an award; (b) the appropriate and specific standards and/or burdens of proof for such an award; (c) the amount of a punitive award; (d) the appropriate procedures for a punitive award; (e) the appellate standard of review of an award of punitive damages; (f) trifurcation of the proceedings with respect to whether compensatory liability and damages should be imposed, whether punitive damages should be imposed, and what amount of punitive damages should be imposed in order to prevent the inappropriate admission of evidence regarding punitive damages.

**THIRTY-FOURTH DEFENSE**

RSUI contends that the limits on punitive damages imposed by ALA. CODE § 6-11-21 should apply as a matter of rule and established public policy without alteration or amendment by the Court and that § 6-11-21 is constitutional. RSUI further contends that the principle of deference to the legislature's will should prevail with respect to the limits imposed on punitive damages awards and that any holding that does not so defer violates the separation of powers clauses of the Constitution of the United States and the Constitution of the State of Alabama.

**THIRTY-FIFTH DEFENSE**

Plaintiffs have failed to state a claim for which relief can be granted.

**THIRTY-SIXTH DEFENSE**


All allegations contained in Plaintiffs' First Amended Complaint that are not specifically admitted are denied.

**THIRTY-SEVENTH DEFENSE**

Plaintiff is not entitled to recovery to the extent that any damages were caused by Plaintiff's failure to mitigate damages.

**THIRTY-EIGHTH DEFENSE**

RSUI reserves the right to amend its answer and assert such additional defenses as may be available upon the development of facts in the discovery process or otherwise in the course of this litigation and under applicable substantive law.

  
HELEN JOHNSON ALFORD (ALF002)  
JUAN C. ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

N J Cervera, Esq  
Matthew Baker, Esq  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

James S. Lloyd, Esq  
Karen D Farley, Esq  
LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Done this 4<sup>th</sup> day of JANUARY, 2007

  
COUNSEL

## COMMON POLICY DECLARATION



THIS POLICY IS ISSUED BY THE COMPANY INDICATED BY "X" BEFORE THE COMPANY NAME BELOW

☐ Landmark American Insurance Company  
(An Oklahoma Stock Co.)

☒ RSUI Indemnity Company  
(A New Hampshire Stock Co.)

BRANCH ADDRESS: 945 E. Paces Ferry Rd., #1800, Atlanta, GA 30326

POLICY NO. NHD332474

RENEWAL OF: R2HD327878

NAMED INSURED AND MAILING ADDRESS:

PRODUCER:

Fraternal Property Management Association  
(Name Incomplete - See FPMA Named Insured End )  
425 N. Martingale Road  
Suite 1100  
Schaumburg, IL 60173

POLICY PERIOD: From 04/01/2004 To 04/01/2005 12:01 A.M. Standard Time at your Mailing Address above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE  
WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.  
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COVERAGE PARTS		PREMIUM		COMM
<input checked="" type="checkbox"/> Commercial Property	RSG40001 (1203)	Excluding TRIA	\$ 6,253,162.	
<input type="checkbox"/> Commercial General Liability			\$	DO NOT WRITE IN THIS AREA
<input type="checkbox"/> Crime and Fidelity			\$	
<input type="checkbox"/> Commercial Inland Marine			\$	
<input type="checkbox"/> Boiler and Machinery			\$	
<input type="checkbox"/> Commercial Automobile			\$	
<input type="checkbox"/> Farm			\$	
<input type="checkbox"/>			\$	
<input type="checkbox"/>			\$	
<input type="checkbox"/> Premium is payable in installments: See endorsement.		TOTAL POLICY PREMIUM	\$ 6,355,744.	
		Premium Excluding TRIA	\$ 6,253,162	
		TRIA Premium	\$ 102,582.	

FORMS APPLICABLE TO ALL COVERAGE PARTS: (Show numbers)  
See attached Forms and Endorsements Schedule

BUSINESS DESCRIPTION: Fraternities

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE FORMS(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE CONTRACT OF INSURANCE.

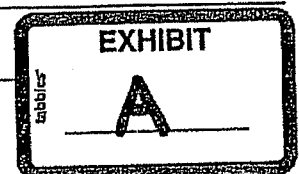
Countersigned 9/9/04  
Date

By:

Authorized Representative

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RSG 40003 0704



A member of Alleghany Insurance Holdings LLC

R/ I INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA: \$10,304.

Additional TRIA Premium: \$ 169

Total Additional Premium Due This Endorsement: \$10,473.

It is hereby agreed that the premium shown above is due for the 4<sup>th</sup> Quarter.

All other terms, conditions and warranties remaining unchanged

This endorsement effective 01/01/2005  
forms part of Policy Number NHD332474  
issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 4  
Date Processed : 04/21/2005

*James A. Dwyer*

RSUI INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA:	\$75,895.
Additional TRIA Premium:	\$ 1,245
Total Additional Premium Due This Endorsement:	\$77,140.

It is hereby agreed that the premium shown above is due for the 3<sup>rd</sup> Quarter

All other terms, conditions and warranties remaining unchanged

This endorsement effective 11/01/2004  
forms part of Policy Number NHD332474  
Issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 3  
Date Processed : 02/15/2005

*James A. Dipeolu*

RJI INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA: \$78,309.

Additional TRIA Premium: \$ 1,285.

Total Additional Premium Due This Endorsement: \$79,594

It is hereby agreed that the premium shown above is due for the 2<sup>nd</sup> Quarter.

All other terms, conditions and warranties remaining unchanged.

This endorsement effective 08/01/2004  
forms part of Policy Number NHD332474  
Issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No.: 2  
Date Processed : 10/18/2004

*James A. Digo*

RSNI INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

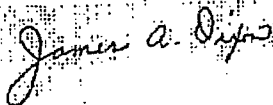
Return Premium Excluding TRIA:	\$28,809.
Return TRIA Premium:	\$ 473.
Total Return Premium Due This Endorsement:	\$29,282.

It is hereby agreed the above premium is returned for the 1<sup>st</sup> Quarter

All other terms, conditions and warranties remaining unchanged.

This endorsement effective 04/01/2004  
forms part of Policy Number NHD332474  
issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 1  
Date Processed : 09/14/2004





RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

IL 70 01 (Ed. 05 92)

Policy No. NHD332474  
Renewal of R2HD327878

### BUSINESSPRO POLICY COMMON DECLARATIONS

<b>NAMED INSURED AND ADDRESS:</b> Fraternal Property Management Association c/o 425 N. Martingale Road Ste. 1100 Schaumburg, IL 60173	<b>POLICY PERIOD:</b> 12:01 A.M. Standard Time at the address of the Named Insured shown at left. From: 4/1/04 To: 4/1/05
<b>IN RETURN FOR PAYMENT OF THE PREMIUM,          AND SUBJECT TO ALL TERMS OF THIS          POLICY, WE AGREE WITH YOU TO PROVIDE          THE INSURANCE AS STATED IN THIS          POLICY.</b>	<b>AGENT'S NAME AND ADDRESS:</b> Swett and Crawford of Illinois, Inc. 1 North Franklin Chicago, IL 60606

Insurance is afforded by the company indicated below:  
(Each a capital stock corporation)

( X ) RSUI Indemnity Company.

This policy consists of the following Coverage  
parts for which a premium is indicated. This  
premium may be subject to adjustment.

Commercial Property	Premium
Commercial General Liability	\$on file w/Company
Commercial Crime	NOT INCLUDED
Commercial Inland Marine	NOT INCLUDED
Commercial Boiler and Machinery	NOT INCLUDED
Commercial Auto	NOT INCLUDED
Commercial Umbrella	NOT INCLUDED

TOTAL \$ annually subject to annual  
re-rating

Premium shown is payable: At inception;

FORMS AND ENDORSEMENTS applicable to all Coverage Parts and made part of this  
Policy at time of issue are listed on the attached Forms and Endorsements  
Schedule SB.88 01 (11/85).

Countersigned \_\_\_\_\_

Date

By \_\_\_\_\_

*James A. Dyer*

Authorized Representative

IL 70 01 (Ed. 05/92) PRO

BUSINESSPRO (Reg. U.S. Pat. Off.)  
(Page 1 of 1)



RSUI Group, Inc.  
945 East Paces Ferry Road  
Suite 1890  
Atlanta, GA 30326

**NAMED INSURED WORDING  
RSUI INDEMNITY COMPANY  
POLICY # NHD332474**

**FIRST NAMED INSURED:**

FRATERNAL PROPERTY MANAGEMENT ASSOCIATION  
C/o 425 N. MARTINGALE ROAD  
SUITE 1100  
SCHAUMBURG, IL 60173

**BROAD NAMED INSURED:**

ALL FRATERNAL PROPERTY MANAGEMENT ASSOCIATION PARTICIPATING ENTITIES PER THE  
RECORDS ON FILE WITH HOBBS GROUP/KIRKLIN & COMPANY, LLC.

**FPMA NAMED INSURED ENDORSEMENT**

IL 00 17 11 98

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

IL 00 17 11 98

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Page 1 of 1

□

POLICY NUMBER: NHD332474

COMMERCIAL PROPERTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LOSS ADJUSTMENT ENDORSEMENT – COMMERCIAL  
PROPERTY COVERAGE**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
 BUSINESS INCOME COVERAGE FORM (AND EXTRA EXPENSE)  
 BUSINESS INCOME COVERAGE FORM (WITHOUT EXTRA EXPENSE)  
 EXTRA EXPENSE COVERAGE FORM  
 TOBACCO SALES WAREHOUSES COVERAGE FORM  
 STANDARD PROPERTY POLICY

- A. This endorsement is intended to facilitate payment of insurance proceeds in the event of loss or damage to Covered Property from a loss that is covered by:
1. This Commercial Property coverage; and
  2. Boiler and Machinery insurance; and
- there is a disagreement between the insuring companies as to the amount of the loss to be paid by each company.
- B. The provisions of item C. of this endorsement apply only if all of the following requirements are met:
1. The Boiler and Machinery insurance carried by the named insured, insuring the Covered Property, contains a provision with substantially the same requirements, procedures and conditions as contained in this endorsement.
  2. The damage to the Covered Property was caused by a loss for which both we and the Boiler and Machinery insuring company(s) admit to some liability for payment under the respective policies.
  3. The total amount of the loss is agreed to by you, us and the Boiler and Machinery insuring company(s).
  4. We and the Boiler and Machinery insuring company(s) disagree as to the amount of loss that each of us should pay that is attributable to:
    - a. A cause of loss covered under this Commercial Property coverage; and
    - b. An "accident" covered under the Boiler and Machinery Insurance.
- C. If the requirements listed in B. above are satisfied, we and the Boiler and Machinery insuring company(s) will make payments to the extent, and in the manner, described in the following:
1. We will pay, after your written request, the entire amount of loss that we have agreed as being covered by this Commercial Property coverage and one-half (1/2) the amount of loss that is in disagreement.
  2. The Boiler and Machinery insuring company(s) will pay, after your written request, the entire amount of loss that they have agreed as being covered by the Boiler and Machinery Insurance and one-half (1/2) the amount of loss that is in disagreement.
  3. The amount in disagreement to be paid by us under this endorsement shall not exceed the amount payable under the equivalent Loss Adjustment Endorsement(s) of the Boiler and Machinery insuring company(s).
  4. The amount to be paid under this endorsement shall not exceed the amount we would have paid had no Boiler and Machinery Insurance been in effect at the time of loss.
  5. Acceptance by you of sums paid under this endorsement does not alter, waive or surrender any other rights against us.
  6. **ADDITIONAL CONDITIONS**
    - a. We and the Boiler and Machinery insuring company(s) agree to submit our differences to arbitration within 90 days after loss payment made under the terms of this endorsement.
    - b. You agree to cooperate with any arbitration procedures. There will be three arbitrators: one will be appointed by us, and another will be appointed by the Boiler and Machinery insuring company(s). The two arbitrators will select a third arbitrator. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. A decision agreed to by two of the three arbitrators will be binding on both parties. Judgment on any award can be entered in any court that has jurisdiction.

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

1. POLICY NO. NHD332474EFFECTIVE DATE 04/01/042. NAMED INSURED Fraternity Property Management AssociationRENEWAL OF R2HD327878

## 3. DESCRIPTION OF PREMISES

☐ "X" If supplemental declarations attached

Prem. No.	Bldg. No.	Location, Construction and Occupancy
**	**	**Per Schedule on file with Company

## COVERAGES PROVIDED - Insurance of the described premises applies only for coverages for which a limit of insurance is shown.

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coinsurance*	Rates
**	**	Building, Contents and Rents	\$ 5,000,000. per occurrence and annual aggregates as respects Flood & Earthquake	Special	90%	Included

\*IF EXTRA EXPENSE COVERAGE, LIMITS ON LOSS PAYMENT

## OPTIONAL COVERAGES - Applicable only when entries are made in the schedule below.

Prem. No.	Bldg. No.	Agreed Value	Coverage	Amount	Building	Replacement Cost (X)	Personal Property	Including "Stock"
**	**	Expiration Date			X		X	

Prem. No.	Bldg. No.	Inflation Guard (Percentage)	* Monthly Limit of Indemnity (Fraction)	* Maximum Period of Indemnity (X)	* Extended Period of Indemnity (Days)
		Building Personal Property			

\* APPLIES TO BUSINESS INCOME ONLY

## 4. MORTGAGE HOLDERS

Prem. No.	Bldg. No.	Mortgage Holder Name and Mailing Address

## 5. DEDUCTIBLE

See attached Manuscript Form

## TOTAL PREMIUM

FOR THIS \$ Included  
COVERAGE PART

## 6. FORMS / ENDORSEMENTS APPLICABLE

See attached  
Manuscript Form

THESE DECLARATIONS, WHEN COMBINED WITH THE COMMON POLICY DECLARATIONS, THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE CONTRACT OF INSURANCE.

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RSG 40001 1203

# FORMS AND ENDORSEMENTS SCHEDULE

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

RSUI Dec Sheet  
EXCLUSION AND LIMITED ADDITIONAL COVERAGE FOR FUNGUS  
RSG94060 (03/04)  
RSG96006 (09/03)  
RSG96014 (05/04)  
IL7001 (05/92)  
FPMA Named Insured Endorsement  
IL0017 (11/98)  
CP1260 (10/91)  
RSG40001 1203  
SELECT BUSINESS POLICY PLUS COVERAGES FOR FRATERNITIES (10/96)  
SB8605 (11/97)  
SB8602 (04/99)  
SB8605 (11/97)  
CM7658 (12/98)  
CM0020 (06/95)  
CM7669 (01/89)  
CP0040 (06/95)  
SB8696 (11/97)  
HURRICANE DEDUCTIBLE FORM  
CM0001 (0900)  
CM7668 (07/90)  
CM7661 (11/99)  
CM0066 (06/95)  
CM00067 (09/00)  
IL0903 (04/98)  
ILLINOIS CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
INDIANA CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
KENTUCKY CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
WEST VIRGINIA CHANGES – MINE SUBSIDENCE  
RSG96013 (10/03)

SB8801 (11/85)

PAGE 1 OF 1

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION AND LIMITED ADDITIONAL COVERAGE FOR FUNGUS**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

**A. The following Exclusion is added:**

**EXCLUSION - "Fungus", Wet Rot, Dry Rot And Bacteria**

We will not pay for loss or damage caused directly or indirectly by the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But if "fungus", wet or dry rot or bacteria results in a "covered cause of loss", we will pay for the loss or damage caused by that "covered cause of loss"

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

**B. The following Additional Coverage is added:**

**ADDITIONAL COVERAGE - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. This limited coverage applies only when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence, and only if any loss resulting from the following is reported to us within 60 days of the occurrence.
  - a. A "covered cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. Under conditions described in item B.1. above, we will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present
3. The coverage provided under this Limited Coverage is limited to \$15,000. per location subject to a policy annual aggregate limit of \$250,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000. per location subject to a policy annual aggregate limit of \$250,000. even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property

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If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

C. The following Definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SCHEDULED LIMIT OF LIABILITY**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

It is understood and agreed that the following special terms and conditions apply to this policy:

1. In the event of loss hereunder, liability of the Company shall be limited to the least of the following in any one "occurrence":
  - a. The actual adjusted amount of the loss, less applicable deductibles;
  - b. 100% of the individually stated value for each scheduled item of property insured at the location which had the loss as shown on the latest Statement of Values on file with this Company, less applicable deductibles. If no value is shown for a scheduled item then there is no coverage for that item; or
  - c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.
2. Coverage under this policy is provided only at the locations listed on the latest Statement of Values on file with this Company or as endorsed on to this policy.
3. The premium for this policy is based upon the Statement of Values on file with this Company or attached to this policy

The term "occurrence", where used in this policy, shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties arising from one event.

When the term "occurrence" applies to a loss or series of losses from the perils of tornado, cyclone, hurricane, windstorm, hail, flood, earthquake, volcanic eruption, riot, riot attending a strike, civil commotion and vandalism and malicious mischief, one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing a proof of loss the insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to occur at any covered location.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – ELECTRONIC PROPERTY AND VIRUS**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

**A. It is agreed the following definitions apply:**

"Electronic Data" means information, facts or "Computer Programs" stored, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy discs, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

"Computer Programs" means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data

"Virus" means a harmful code or similar instructions introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt normal operations

**B. The following exclusion applies:**

**Damage to Electronic Data**

Damage to "Electronic Data", including any cost to replace or restore such "Electronic Data" that is caused by a "Virus" is not covered.

Damage to "Electronic Data" caused by the willful or malicious alteration, manipulation or destruction of such "Electronic Data" by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace your computer systems or any part of those systems, is not covered.

However, this exclusion does not apply to damage to "Electronic Data" arising from the following specified causes of loss, if these causes of loss are not otherwise excluded: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of ice, snow or sleet, or water damage.

**C. The following is added to the Business Income (and Extra Expense) Coverage Form, if it applies:**

**Additional Limitation- Interruption of Computer Operations**

Business Income loss incurred when a "suspension" of "operations" is caused by destruction or corruption of "Electronic Data" or any loss or damage to "Electronic Data", caused by a "Virus" is not covered.

Extra Expense loss incurred when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of "Electronic Data" or any loss or damage to "Electronic Data", caused by a "Virus" is not covered.

However, this limitation will not apply to destruction, corruption, loss or damage to "Electronic Data" arising from the following specified causes of loss, if these causes of loss are not otherwise excluded: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of ice, snow or sleet, or water damage

*This Endorsement Changes The Policy. Please Read It Carefully.*

**EXCLUSION OF PATHOGENIC OR POISONOUS  
BIOLOGICAL OR CHEMICAL MATERIALS**

---

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

The following exclusion is added:

We will not pay for loss or damage caused directly or indirectly by the discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

However, if both A and B. below apply, we will pay up to a maximum of \$10,000 for any and all claims for such loss or damage arising out of events occurring within the term of this policy:

- A. The pathogenic or poisonous biological or chemical materials are normally kept at or brought onto your premises, with your consent, for use in your business operations at your premises; and
- B. The discharge, dispersal, seepage, migration, release, escape or application of the pathogenic or poisonous biological or chemical materials is accidental and is not the result of a willful or malicious act against any persons, organizations, or property of any nature.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

SB 86 96 (Ed. 11 97)

**FRATERNITY SELECT BUSINESS POLICY PLUS**

**NAMED INSURED: Fraternal Property  
Management Association**

**POLICY PERIOD: 4/1/2004 to 4/1/2005**

**TOTAL PROPERTY PREMIUM: \$\*as previously billed Annually subject to annual rating**

**DEDUCTIBLE AMOUNTS:**

\$100,000 Flood -- Zone A or V only	\$25,000 Flood -- all other
\$25,000 Earthquake (Other than CA see endorsement)	\$10,000 --Vacant Locations
\$10,000 Named Storm (see special endorsement)	\$10,000 -- Freeze Claims
\$10,000 Tenant Vandalism	
\$2,500 All Other	

All above deductibles apply per location, for each occurrence

**NOT AT A DESCRIBED PREMISES:**

Insurance is provided only for those coverages for which a Limit of Insurance has been inserted:

	Newly Acquired or constructed Locations	At any other location	In transit, in or on any one conveyance unit
Building	\$250,000	NOT COVERED	NOT COVERED
Business Personal Property	INCLUDED ABOVE	\$10,000	\$10,000
Business Income	INCLUDED ABOVE	NOT COVERED	NOT COVERED
Extra Expense	INCLUDED ABOVE	INCLUDED ABOVE	NOT COVERED

**DESCRIBED PREMISES:**

At the locations specified below, insurance is provided for those coverages for which a Limit of Insurance has been inserted:

Location: Building: Address:  
As per Statement of Values on file.

BUILDING, BUSINESS PERSONAL PROPERTY and BUSINESS INCOME INCLUDING EXTRA EXPENSE:

VALUATION: Building: Replacement Cost -- Agreed Amount; Contents: Replacement Cost, 90% Coinsurance.

Minimum Valuation Requirement for Participation in Property Program: Valuation at 100% of Marshall Swift on File with Hobbs group/Kirklin & Co., LLC.

MORTGAGEHOLDER: As per statement of values on file with Hobbs Group/Kirklin & Co., LLC at 12231 Emmet Street, Suite 5, Omaha, NE 68164 and RSUI Indemnity Company, 945 East Paces Ferry Road, Suite 1890, Atlanta, GA 30326

CERTIFICATES OF INSURANCE/EVIDENCE OF PROPERTY INSURANCE: Any Certificate of Insurance issued in connection with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said Certificate of Insurance/Evidence of Property Insurance, except where any Additional Insured (s) or Loss Payee(s) are named pursuant to the Special Provisions of said Certificate of Insurance/Evidence of Property Insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions and exclusions stated herein.

The Company hereby authorizes Hobbs Group/Kirklin & Co., LLC to issue Certificates of Insurance/Evidence of Property Insurance including any mortgagee, Loss Payee and Additional Insured clauses.

#### SUPPLEMENTARY COVERAGES

The coverages below are policy sublimits. If you purchase additional limits for any of these coverages at a specific location, the Limits of Insurance shown at that location will reflect your total limits, including the Limits of Insurance shown below.

A. The Limits of Insurance shown below are provided for the Coverages listed and apply separately at each of your premises. If there is no separate deductible indicated, the Property Deductible will apply.

\$5,000 Arson Reward  
\$25,000 Fire Department Services Charge  
\$25,000 Fire Protection Device Recharge  
ORDINANCE OR LAW

Full Building Limit as per Statement of Values on file for Coverage A – Coverage for Loss to the Undamaged Portion of the Building  
\$250,000 for Coverage B – Demolition Cost Coverage & Coverage C – Increased Cost of Construction Coverage  
\$5,000 Outdoor Property with a \$500 maximum per item  
\$10,000 Pollutant Clean Up and Removal

B. When Business Income Coverage is included in the Declarations, the following coverages are provided up to the Business Income Limit of Insurance. These are extensions of coverage, not additional Limits of Insurance:

Utility Services (including Overhead Power Transmission Lines)

#### OPTIONAL COVERAGE

A. Guaranteed Replacement Cost – Building Coverage Only

To qualify for Guaranteed Replacement Cost, your building must have an insured value of at least \$90 per Square Foot against all usable square footage (both finished and unfinished spaces included) or have replacement cost appraisal by licensed appraiser on file with Hobbs group/Kirklin & Co., LLC justifying lower value. If replacement cost appraisal is on file, minimum valuation of 100% of Marshall Swift on file with Hobbs group/Kirklin & Co., LLC does not apply.

If location qualifies for Guaranteed Replacement Cost, insurance carrier will pay replacement cost of building, subject to Valuation provision in the policy, regardless of scheduled limit, however, all policy sublimits remain unchanged. In the absence of Guaranteed Replacement Cost valuation the maximum recovery is 100% of scheduled building values at the time of the loss.

FORMS AND ENDORSEMENTS applicable to this Coverage Part and made a part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule, SB 88 01 (11/85).



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

**THIS ENDORSEMENT CHANGES THE POLICY.**  
**PLEASE READ IT CAREFULLY.**

**SELECT BUSINESS POLICY**  
**SPECIAL COVERAGES FOR FRATERNITIES**

This endorsement modifies insurance provided under the following:

**SELECT BUSINESS POLICY**  
**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

- I. The following is added to **SECTION A. COVERAGE**  
Section A.1.c is amended to add:  
  
Personal Property of Fraternity house residents is excluded.
- II. The following is added to **SECTION A. COVERAGE**  
Section A.1.b. (1) is amended to:  
  
Personal property owned by you and used in your business including, but not limited to, Fine Arts, Accounts Receivable, Valuable Papers, Commercial Articles and Electronic Data Processing Equipment;
- III. The following is amended to **SECTION C. EXCLUSIONS**  
Section C.1. is amended to add:  
  
h. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.
- IV. The following is amended to **SECTION D. LIMITATIONS**  
Section D.4 is deleted and replaced with the following:  
  4. We will not pay more than \$25,000 for loss or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - a. the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - b. the loss or damage is caused by or resulting from thawing of snow, sleet or ice on the building structure.
- IV. The following is added to **SECTION E. ADDITIONAL COVERAGES:**
  7. Arson Reward

We will pay, up to the limit listed in the Declarations for this Additional Coverage, a reward to any individual(s) who provided information leading to the arrest of the person(s) who committed an arson, which damaged your Covered Property.

The policy deductible does not apply to this Additional Coverage. This Additional Coverage does not apply in those states that do not consider arson rewards a matter of insurance, and thereby disallow them as part of insurance policies.

- V. The following is amended of **SECTION F. COVERAGE EXTENSIONS**  
Section F. Coverage Extensions, Paragraph 2 is deleted and replaced with;

**2. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your trees, shrubs and plants, piers, wharves, docks or retaining walls (not attached to buildings), including debris removal expense.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

- VI. The following is added to **SECTION J. DEFINITIONS**

3. "Location" includes any single or multiple structures at the same address or different addresses as long as they are all owned by the same entity or individual.

This endorsement also modifies insurance provided under the following:

**SELECT BUSINESS POLICY CONDITIONS**

- I. The following is amended to **Section J. Vacancy**  
Section J.1.b. is deleted and replaced with the following:  
"It is understood and agreed that any insured building under renovation shall mean that the insured has contractually secured the services of a qualified contractor or contractors to perform work consisting of remodeling (including but not limited to carpentry, masonry, painting, plumbing, wiring, heating and cooling), improvements, redecorating, or other work performed on the building structure; such renovation shall not include additions to the structure such as room additions or additional stories. Said under renovation shall mean the time frame between the contract's specified job start and job completion dates during which the contractor(s) is (are) in process of performing the work specified by contract; during said time frame the building shall not be considered vacant."
- II. The following is added to **Section J. Vacancy**
- c. Buildings which are idle over school breaks or holidays are not considered to be vacant. However, if a premise is vacated at the start of a school break and is not reoccupied at the end of the school break, the 60 consecutive day provision in Condition II below begins on the first day of the start of the break.
  - d. The Vacancy Provision does not apply to buildings that meet the definition of a vacant building in J.1.a. if that building has been charged the vacancy rate thus eliminating the vacancy provision.
  - e. A deductible of \$10,000 applies per location, for each occurrence, to any covered cause of loss, to all vacant buildings.

III. The following amends Section J. Vacancy

Section J 2. is deleted and replaced with the following;

If the building where loss or damage occurs has been vacant for more than 30 consecutive days before that loss or damage occurs:

a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (1) vandalism;
- (2) sprinkler leakage, unless you have protected the system against freezing;
- (3) building glass breakage;
- (4) water damage
- (5) theft; or
- (6) attempted theft

b. With respect to Covered Causes of Loss other than those listed in 2.(a)(1) through 2. (a)(6) above, we will reduce the amount we would otherwise pay for loss or damage by 15%.

If the building where loss or damage occurs has been vacant for more than 30 consecutive days before that loss or damage occurs or if the location has been properly reported as vacant resulting in the charging of the appropriate vacancy rate, a deductible of \$10,000 will apply to any loss or damage by any cause except the following;

- a. as provided in form CM7662 attached to this policy
- b. as provided in form CM7661 attached to this policy
- c. as provided by the Hurricane Deductible form attached to this policy

III. Under Section K. Valuation, 2.g is deleted in its entirety.

IV. The following is added to Section K. Valuation

- 4. If Guaranteed Replacement Cost option is chosen by an insured location as the method of valuation For building coverage we will determine the value of the Covered Property in the event of loss or damage as follows:
  - a. At Guaranteed Replacement Cost (without deduction for depreciation) as of the time of loss or damage except as provided in b. through d. below:

- b. We will not pay 1 a Guaranteed Replacement Cost basis for any loss or damage:
  - (1) until the damage is actually repaired or replaced,  
and
  - (2) unless the repairs or replacement are made:
    - (a) as soon as reasonably possible after the loss or damage; or
    - (b) if claim was initially made on an actual cash basis, as soon as reasonably possible after you notify us, within 180 days after the loss or damage, or your intent to make a claim on a Guaranteed Replacement Cost basis.
- c. We will not pay more for loss or damage on a Guaranteed Replacement Cost basis than the Least of (1), or (2) subject to d. below:
  - (1) The cost to replace, on the same premises, the damaged building with a building of:
    - (a) comparable material and quality and size; and
    - (b) used for the same purpose;or
  - (2) The amount you actually spend that is necessary to repair or replace the damaged property.
- d. The cost of repair or replacement does not include any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

This endorsement also modifies insurance provided under the following:

**SELECT BUSINESS POLICY  
BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM**

- I. The following amends Section D. ADDITIONAL COVERAGES  
Section D.2.b.(2). Is deleted and replaced with;
  - (2) 90 consecutive days after the date determined in b (1).

This endorsement also modifies insurance provided under the following:

**ACCOUNTS RECEIVABLE COVERAGE FORM**

- I. The following amends Section A. COVERAGE  
Section A.2.a. is deleted entirely.

This endorsement also modifies insurance provided under the following:

**VALUABLE PAPERS AND RECORDS COVERAGE FORM**

- I. The following amends Section A. COVERAGE  
Section A.2.c. is deleted entirely.

This endorsement also modifies insurance provided under the following:

The following amends Select Business Policy Conditions (SB86-01 Edition 11-97) page 7 of 7 -- under Loss Conditions k.2.h. (2): amending "within 12 months" to "within 180 Days."

It is understood that Backup of Sewers or Drains is a Covered Cause of Loss and the \$2,500 All other deductible applies.



SB 86 01  
(Ed. 11 97)

## SELECT BUSINESS POLICY CONDITIONS

This Coverage Part is subject to the following conditions

### GENERAL CONDITIONS

#### A. Concealment, Misrepresentation Or Fraud

This Coverage Part is void in any case of fraud by you at any time relating to this insurance. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact at concerning:

1. this Coverage Part;
2. the Covered Property;
3. your interest in the Covered Property; or
4. a claim under this Coverage Part.

#### B. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

#### C. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. there has been full compliance with all of the terms of this Coverage Part; and
2. the action is brought within 2 years after the date on which the direct physical loss or damage occurred.

#### D. Liberalization

If we adopt any revision that would broaden the coverage under this Coverage Part with-

out additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

#### E. No Benefit To Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

#### F. Policy Period, Coverage Territory

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. during the policy period shown in the Declarations; and
  - b. within the Coverage Territory
2. The Coverage Territory is:
  - a. the United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

#### G. Mortgageholders

1. The term "mortgageholder" includes trustees.
2. We will pay for covered loss of or damage to building or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
3. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

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4. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- a. pays any premium due under this Coverage Part if you have failed to do so;
- b. submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- c. has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

5. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- a. the mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- b. the mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired. At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

6. If we cancel this policy, we will give written notice to the mortgageholder at least:

- a. 10 days before the effective date of cancellation if we cancel for your nonpayment or premium; or
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

7. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

#### LOSS CONDITIONS

##### A. Abandonment

There can be no abandonment of any property to us

##### B. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of physical loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and the amount of physical loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1. pay its chosen appraiser; and
- 2. bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

##### C. Duties In The Event Of Loss Or Damage

1. You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when, and where the loss or damage occurred

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pay more than the actual amount of the loss or damage

#### E. Loss Payment

d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such loss, for consideration in the settlement of the claim. However we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a covered Cause of Loss. This will not increase the Limit of Insurance. Also, if feasible, set damaged property aside and in the best possible order, for examination.

e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

f. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

g. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

h. Cooperate with us in the investigation or settlement of the claim.

2. We may examine any Insured under oath while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this insurance or claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

#### D. Insurance Under Two Or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not  
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1. In the event of direct physical loss or damage covered by this Coverage Part, at our option and subject to any applicable Deductible provision, or Loss Condition, we will either:

a. pay the value of lost or damaged property, as specified in K. Valuation below;

b. pay the cost of repairing or replacing the lost or damaged property, subject to 2. below;

c. take all or any part of the property at an agreed or appraised value; or

d. repair, rebuild or replace the property with other property of like kind and quality subject to 2. below.

2. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property

3. The amount of Business Income loss will be determined based on:

a. the Net Income of the business before the direct physical loss or damage occurred;

b. the likely Net Income of the business if no physical loss or damage had occurred but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;

c. the operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and

d. other relevant sources of information, including:  
(1) your financial records and ac-

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counting procedures;

(2) bills, invoices and other vouchers;  
and

(3) deeds, liens, or contracts

4. The amount of Extra Expense will be determined based on:

a. All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:

(1) the salvage value that remains of any property bought for temporary use during the "period of restoration," once "operations" are resumed; and

(2) any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

b. Necessary expenses that reduce the Business Income loss that otherwise would have been incurred

5. We will give notice of our intentions within 30 days after we receive the sworn statement of loss

6. We will not pay you more than your insurable interest in the Covered Property

7. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their insurable interest in the Covered Property

8. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

9. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with

all of the terms of this Coverage Part and;

a. we have reached agreement with you on the amount of loss; or

b. an appraisal award has been made.

#### F. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis

2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage.

#### G. Recovered Property

1. If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

2. If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may, at your own expense:

a. stamp "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or

b. remove the the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise or its containers to comply with the law

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(Ed. 11 97)**H. Resumption Of Operations****1. We will reduce the amount of your:**

a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations," in whole or in part by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.

b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

**2. If you do not resume "operations," or do not resume "operations" as quickly as possible, we will pay losses based on the length of time it would have taken to resume "operations" as quickly as possible.****I. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

**1. Prior to a loss to your Covered Property or Covered Income.****2. After a loss to your Covered Property or Covered Income only if, at the time of loss, that party is one of the following:**

a. someone insured by this insurance;

b. a business firm:

(1) owned or controlled by you; or

(2) that owns or controls you; or

c. your tenant.

This will not restrict your insurance

**J. Vacancy****1. Description of Terms**

a. As used in the Vacancy Condition, the term building and the term vacant have the following meaning:

(1) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means that unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations

(2) When this policy is issued to the owner of a building, building means the entire building. Such building is vacant when 70% or more of its square footage:

(a) is not rented; or

(b) is not used to conduct customary operations

b. Buildings under construction or renovation are not considered vacant.

**2. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(1) vandalism;

(2) sprinkler leakage, unless you have protected the system against freezing;

(3) building glass breakage;

(4) water damage;

(5) theft; or

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(6) attempted theft

b. With respect to Covered Causes of Loss other than those listed in 2. (a)(1) through 2. (a)(6) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

#### K. Valuation

1. If actual cash value is indicated in the Declarations as the method of valuation we will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage except as provided in b. through h. below.

b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

c. Finished "stock" you have manufactured at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

(1) Actual cash value of the loss or damage property if you make repairs promptly.

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) divide the amount determined in (a) above by the number of days from the installation of Improvements to the expiration of the lease.

(3) Nothing if others pay for repairs for replacement.

f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(1) blank materials for reproducing the records; and

(2) labor to transcribe or copy the records when there is a duplicate

g. Exhibitions and displays at your cost.

h. Patterns, molds, models, and dies at replacement cost if actually replaced, otherwise at actual cash value.

2. If replacement cost is indicated in the Declarations as the method of valuation we will determine the value of Covered Property in the event of loss or damage as follows:

a. At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b. through j. below:

b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

c. Finished "stock" you have manufactured, at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

(1) Replacement cost of the loss or

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damaged property if you make repairs promptly

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease;

(c) if your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(1) blank materials for reproducing the records; and

(2) labor to transcribe or copy the records when there is a duplicate.

g. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac at actual cash value

h. We will not pay on a replacement cost basis for any loss or damage:

(1) until the lost or damaged property is actually repaired or replaced; and

(2) unless the repairs or replacement are made:

(a) as soon as reasonably possible after the loss or damage; or

(b) if claim was initially made on an actual cash basis, as soon as reasonably possible after you notify us, within 12 months after the loss or damage, of your intent to make claim on a replacement cost basis

i. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3) subject to k. below:

(1) the Limit of Insurance applicable to the lost or damaged property;

(2) the cost to replace, on the same premises, the lost or damaged property with other property:

(a) of comparable material and quality; and

(b) used for the same purpose; or

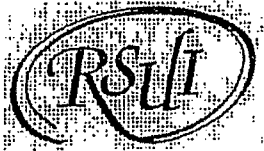
(3) the amount you actually spend that is necessary to repair or replace the lost or damaged property.

j. The cost of repair or replacement does not include any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### L. Errors In Description

We will pay for loss covered by this policy if such loss is otherwise not payable solely because of any unintentional error in describing a location insured under this policy

You agree to give us prompt notice of any such error when discovered.



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**SELECT BUSINESS POLICY  
BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION J - DEFINITIONS.

**A. COVERAGE**

We will pay for direct physical loss of or damage to Covered Property shown in the Declarations caused by or resulting from any Covered Cause of Loss

**1. Covered Property**

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1, and limited in A.2, Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) completed additions;
- (2) fixtures, including outdoor fixtures and signs;
- (3) permanently installed:
  - (a) machinery;
  - (b) equipment; and
  - (c) foundations of machinery, tanks and their component parts, including all connections thereto which are below the undersurface of the lower basement floor, or

where there is no basement, below the surface of the ground

- (4) personal property owned by you that is used to maintain or service the building or structure or its premises, including but not limited to:

- (a) fire extinguishing equipment;
- (b) outdoor furniture;
- (c) floor coverings; and
- (d) appliances used for refrigerating, ventilating, cooking, dish washing or laundering;

- (5) If not covered by other insurance, additions under construction, alterations and repairs to the building or structure;

b. Your Business Personal Property as shown in the Declarations, including:

- (1) personal property owned by you and used in your business;
- (2) labor, materials or services furnished or arranged by you on personal property of others;

(3) your use interest as tenant in improvements and Betterments made a part of the building or structure you occupy but do not own;

(4) leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others; and

(5) signs, including signs attached to buildings, provided there is no coverage for the sign under the Building Covered Property.

c. Personal Property of Others that is in your care, custody or control as shown on the declarations

However, our payment for loss of, or damage to Personal Property of Others will only be for the account of the owner of the property

## 2. Property Not Covered

Covered Property does not include:

- a. accounts, bills, currency, deeds, evidences of debt, money, notes or securities;
- b. animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. automobiles held for sale;
- d. bridges;
- e. contraband, or property in the course of illegal transportation or trade;
- f. foundations of buildings, structures, or boilers if their foundations are below:
  - (1) the lowest basement floor; or
  - (2) the surface of the ground, if there is no basement;
- g. land (including land on which the property is located), water (including groundwater), growing crops or lawns;

h. personal property while waterborne (other than while on regular ferries or railroad car floats);

i. underground pipes, flues or drains except as provided under A. 1 a (3)(c);

j. vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) are licensed for use on public roads; or

(2) are operated principally away from the described premises

This paragraph does not apply to:

(1) vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(2) vehicles or self-propelled machines, other than autos, you hold for sale; or

(3) rowboats or canoes out of water at the described premises;

k. the following property while outside of buildings:

(1) grain, hay, straw or other crops;

(2) trees, shrubs or plants, piers, wharves, docks or retaining walls, all except as provided in the Coverage Extensions.

l. the cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media.

## B. COVERED CAUSES OF LOSS

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section C. Exclusions; or

2. Limited in Section D. Limitations;

that follow

**C. EXCLUSIONS**

- 1 We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

**a. Ordinance or Law**

The enforcement of any ordinance or law:

- (1) regulating construction; use or repair of any property; or
- (2) requiring the tearing down of any property including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) the increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a direct physical loss or damage to that property.

**b. Earth Movement**

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if earth movement results in fire, theft, or explosion, we will pay for the loss or damage caused by that fire or explosion.
- (2) Volcanic eruption, explosion or effusion. But, if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) airborne volcanic blast or airborne shockwaves;
- (b) ash, dust or particulate matter; or
- (c) lava flow

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion does not apply to Covered Personal Property in due course of transit.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority. But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Utility Services**

The failure of power or other utility service supplied to the described premises however caused, if the failure occurs away from the described premises.

But if the failure of power or other utility services results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss.

**e. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused

But if nuclear reaction or radiation or radioactive contamination results in fire we will pay for that loss or damage caused by the fire.

**f. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
- (2) Mudslide or mudflow  
But if Water, as described in g (1) and g (2) above results in fire, explosion, theft or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion, theft or sprinkler leakage.

This exclusion does not apply to Covered Personal Property in due course of transit.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires  
But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.

**d. (1) Wear and tear;**

- (2) rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) smog;
- (4) settling, cracking, shrinking or expansion;
- (5) nesting or infestation or discharge or release of waste products or secretions by insect, birds, rodents or other animals.
- (6) mechanical breakdown, including rupture or bursting caused by centrifugal force; or

**(7) the following causes of loss to personal property;**

- (a) dampness or dryness of atmosphere;
- (b) cold or heat;
- (c) marring or scratching.

But if an excluded cause of loss that is listed in 2.d (1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control But if explosion of steam boilers, steam pipes, steam engines, or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass

f. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) you do your best to maintain heat in the building or structure; or
- (2) you drain the equipment and shut off the supply if the heat is not maintained

g. Dishonest or criminal act by you, any of your partners, employees (including leased employees) directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) acting alone or in collusion with others; or
- (2) whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered

h. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense

i. Rain, snow, ice or sleet to personal property in the open.

j. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss

k. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release

or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

3. We will not pay for loss or damage caused by or resulting from any of the following 3a. through 3c. But if an excluded Cause of Loss that is listed in 3a. through 3c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss

a. Weather conditions But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1 above to produce the loss or damage

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body

c. Faulty, inadequate or defective:

- (1) planning, zoning, development, surveying, siting;
- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) materials used in repair, construction, renovation or remodeling; or

(4) maintenance;

of part or all of any property on or off the described premises

#### D. LIMITATIONS

1. We will pay for direct physical loss or damage to Covered Personal Property which is in due course of transit at your risk if the Covered Personal Property is:

a. in the custody of a carrier or bailee for hire; or

b. on vehicles you own or operate; but only up to the Transit Limit of Insurance shown in the Declarations and subject to the Transit deductible shown in the Declarations.

2. We will not pay for loss or damage to any of the following types of property if the loss or damage occurs at an unnamed location or while in transit:

- a. Musical Instruments
- b. Contractors' Equipment, including Cranes

This limitation does not apply to musical instruments or contractors equipment you manufacture, process or hold for sale.

3. We will not pay for loss or damage to:

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion
- c. Property that is missing, where the only evidence of the loss or damage is the shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- d. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions

4. We will not pay more than \$10,000 for loss or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- a. the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- b. the loss or damage is caused by or results from thawing of snow, sleet or ice on the building structure.

5. We will only pay for loss of or damage to animals if the loss or damage is caused by any of the "specified causes of loss" or building glass breakage, and then only if they are killed or their destruction is made necessary.

6. The special limit shown for each category, a. through c., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- a. \$2,500 for furs, fur garments and garments trimmed with fur
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item
- c. \$250 for stamps, tickets (including lottery tickets held for sale) and letters of credit

7. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder, or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- a. results in discharge of any substance from any automatic fire protection system; or
- b. is directly caused by freezing

**E. ADDITIONAL COVERAGES****1. Collapse**

The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in 1.a through 1.e. below.

a. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this Coverage Form, if the collapse is caused by one or more of the following:

- (1) the "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Form;
- (2) hidden decay;
- (3) hidden insect or vermin damage;
- (4) weight of people or personal property;
- (5) weight of rain that collects on a roof;
- (6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 1.a(1) through 1.a.(6), we will pay for the loss or damage even if the use of defective material or methods, in construction, remodeling or renovation, contributed to the collapse

b. If the direct physical loss or damage does not involve collapse of a building we will pay for loss or damage to Covered Property caused by the collapse of personal property only if:

- (1) the personal property which collapses is inside a building; and

- (2) the collapse was caused by a cause of loss listed in 1.a (1) through 1.a.(6) above

c. With respect to the following property:

- (1) outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- (2) awnings, gutters and downspouts;
- (3) yard fixtures;
- (4) outdoor swimming pools;
- (5) fences;
- (6) piers, wharves, and docks;
- (7) beach or diving platforms or appurtenances;
- (8) retaining walls; and
- (9) walks, roadways and other paved surfaces;

If the collapse is caused by a Cause of Loss listed in 1 a (1) through 1 a.(6), we will pay for loss or damage to that property only if:

- (1) such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
- (2) the property is Covered Property under this Coverage Form.

d. Collapse does not include settling, cracking, shrinkage, bulging or expansion.

e. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Form.

No Deductible applies to this Additional Coverage.

**2. Debris Removal**

a. We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of

Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) the date of direct physical loss or damage; or
- (2) the end of the policy period.

b. The most we will pay under this Additional Coverage is 25% of:

- (1) the amount we pay for the direct physical loss of or damage to Covered Property; plus
- (2) the deductible in this Coverage Form applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

c. This Additional Coverage does not apply to the cost to:

- (1) extract "pollutants" from land or water; or
- (2) remove, restore or replace polluted land or water.

### 3. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to the limit specified in the Declarations for this Additional Coverage for your liability for fire department service charges:

- a. assumed by contract or agreement prior to loss; or
- b. required by local ordinance.

No Deductible applies to this Additional Coverage

### 4. Fire Protection Device Recharge

We will pay, up to the limit listed in the Declarations for this Additional Coverage, to recharge or refill your fire protective devices that are permanently installed in buildings at the described premises.

This Additional Coverage only applies when such devices have been discharged while being used to combat a covered fire.

### 5. Loss Data Preparation

We will pay, up to the limit listed in the Declarations for this Additional Coverage, for reasonable costs you incur in preparing loss data required by policy conditions after a loss covered by this Coverage Part. This includes the cost of taking inventory, making appraisals and preparing other data to determine the extent of your loss. This does not include public adjusters fees.

### 6. Pollutant Clean Up and Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge or dispersal of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- a. the date of direct physical loss or damage; or
- b. the end of the policy period.

The most we will pay for each location under this Additional Coverage is stated in the Declarations for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this Policy

No Deductible applies to this Additional Coverage

**F. COVERAGE EXTENSIONS**

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises

**1. Newly Acquired or Constructed Property**

a. You may extend the Insurance that applies to Building to apply to:

- (1) your new buildings while being built on the described premises;
- (2) buildings you acquire at locations, other than the described premises, intended for:
  - (a) similar use as the building described in the Declaration; or
  - (b) use as a warehouse.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations

b. You may extend the Insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

c. Insurance under this Extension for each newly acquired or constructed property will end when any of the following occurs:

- (1) this Coverage Part expires;
- (2) 90 days expire after you acquire or begin to construct the property; or
- (3) you report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property

d. If the coverage provided by this extension has expired due to Item (c) above, the Limit of Insurance shown in the Declarations for "At Any Other Location" will apply.

**2. Outdoor Property**

You may extend the Insurance provided by this Coverage Form to apply to your trees, shrubs and plants, piers, wharves, docks or retaining walls (not attached to buildings), including debris removal expense, caused by or resulting from any of the following causes of loss:

- a. fire;
- b. lightning;
- c. explosion;
- d. riot or Civil Commotion; or
- e. aircraft.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

**3. Personal Effects**

You may extend the Insurance that applies to Your Business Personal Property to apply to personal effects owned by you, your officers, your partners or your employees.

The most we will pay for loss or damage under this Extension is stated in the Declarations for this Extension per each described premises. Our payment for loss or damage to personal property of others will only be for the account of the owner of the property.

No Deductible applies to this Coverage Extension.

#### 4. Water Damage, Other Liquids, Powder or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

#### G. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The limits applicable to the Coverage Extensions and all of the Additional Coverages are all in addition to the Limits of Insurance except for Collapse and Debris Removal. Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. collapse;
2. debris removal; but if:
  - a. the sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
  - b. the debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;

we will pay up to the limit shown for Debris Removal on the Declarations for each location in any one occurrence under the Debris Removal Additional Coverage.

#### H. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. The Deductible clause does not apply to Business Income.

#### I. OPTIONAL COVERAGES

##### 1. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) the Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times;
  - (2) the percentage of annual increase shown in the Declarations expressed as a decimal (example 8% is .08), times;
  - 3) the number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365

##### Example:

If: The applicable Limit of Insurance is	\$100,000
and the annual percentage increase is	8%
The number of days since the beginning of the policy year (or last policy change) is	146
The amount of increase is:	
\$100,000 X .08	
X 146 ÷ 365 =	\$3,200

##### 2. Ordinance or Law

- a. Each of the Coverages - Coverage A, Coverage B and Coverage C - applies only if that Coverage(s) is chosen by entry in the Declarations and then only with respect to the Building property identified for that Coverage(s) in the Declarations

b. We will not pay under this Optional Coverage for the costs associated with the enforcement of any ordinance or law which requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"

c. Coverage A - Coverage for Loss to the Undamaged Portion of the Building

If there is a direct physical loss or damage from a Covered Cause of Loss to a covered Building property, we will pay under Coverage A for the loss in value of the undamaged portion of the building which is a consequence of enforcement of any ordinance or law that:

- (1) requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (2) regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (3) is in force at the time of the Covered Cause of Loss

d. Coverage B - Demolition Cost Coverage

If there is a direct physical loss or damage from a Covered Cause of Loss to covered Building property, we will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law

If attached, the COINSURANCE Additional Condition Endorsement does not apply to Demolition Cost Coverage

e. Coverage C - Increased Cost of Construction Coverage

(1) If there is a direct physical loss or damage from a Covered Cause of Loss to the covered Building property, we will pay for the increased cost to:

- (a) repair or reconstruct damaged portions of that Building property; and/or
- (b) reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required

When the increased cost is a consequence of enforcement of building, zoning or land use ordinance or law

However:

- (a) This coverage applies only if the restored or remodeled property is intended for similar occupancy to the occupancy prior to the loss or damage unless such occupancy is not permitted by zoning or land use ordinance or law.
- (b) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

If attached, the COINSURANCE Additional Condition Endorsement, does not apply to Increased Cost of Construction Coverage.

f. Loss Payment

(1) Coverage A

- (a) If the replacement cost valuation applies and the property is repaired or replaced on the same or another premises we will not pay more than the lesser of:
  - (i) the amount you actually spend to repair, rebuild or reconstruct the building, but not more than the amount it would cost to restore the building on the same

premises and to the same height, floor area, style and comparable quality of the original property insured; or

(ii) the Limit of Insurance shown in the Declarations as applicable to the covered building property.

(b) If the replacement cost valuation applies and the property is not repaired or replaced, or if the replacement cost valuation does not apply we will not pay more than the lesser of:

(i) the actual cash value of the building at the time of loss; or

(ii) the Limit of Insurance shown in the Declarations as applicable to the covered building property.

## (2) Coverage B

We will not pay more than the lesser of the following

(a) the amount you actually spend to demolish and clear the site of the described premise; or

(b) the applicable Limit of Insurance shown for Coverage B in the Declarations

## (3) Coverage C

(a) We will not pay under Coverage C:

(i) until the property is actually repaired or replaced at the same or another premises; and

(ii) unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend the period in writing during the two years

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premise, the most we will pay under Coverage C is the lesser of;

(i) the increased cost of construction at the same premises; or

(ii) the applicable Limit of Insurance shown for Coverage C in the Declarations

(c) If the ordinance or law requires relocation to another premises, the most we will pay under Coverage C is the lesser of;

(i) the increased cost of construction at the new premises; or

(ii) the applicable Limit of Insurance shown for Coverage C in the Declarations.

g. Under this Optional Coverage we will not pay for loss due to any ordinance or law that:

(1) you were required to comply with before the loss, even if the building was undamaged; and

(2) you failed to comply with.

## 3. Utility Services

a We will pay for direct physical loss or damage to Covered Property described in the Declarations by the interruption of any of the following

services to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the following property, not on the described premises:

(1) Water Supply Services, meaning the following types of property supplying water to the described premises:

- (a) pumping stations; and
- (b) water mains.

(2) Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:

- (a) communication transmission lines, including optic fiber transmission lines;
- (b) coaxial cables; and
- (c) microwave radio relays except satellites

(3) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

- (a) utility generating plants;
- (b) switching stations;
- (c) substations;
- (d) transformers; and
- (e) transmission lines.

b. The Utility Services Limit of Insurance as shown on the Declarations is part of, not in addition to, the Limit of Insurance stated in the Declarations, as applicable to the Covered Property.

#### J. DEFINITIONS

1. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

2. "Stock" means merchandise held in storage or for sale, raw materials and in process or finished goods, including supplies used in their packing or shipping.

3. "Specified Causes of Loss" means the following: Fire; lightning; explosion; wind-storm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sink-hole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

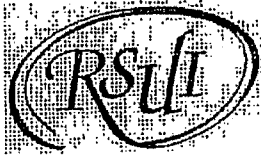
a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) the cost of filling sinkholes; or
- (2) sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) personal property in the open; or
- (2) the interior of a building or structure, or property inside a building or structure unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.



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### SELECT BUSINESS POLICY BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights and duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION H - DEFINITIONS

#### A. COVERAGE

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property, including personal property in the open (or in a vehicle) within 1000 feet, of the premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss

If you are a tenant, your premises is the portion of the building which you rent, lease or occupy, including all routes within the building to gain access to the described premises and your personal property in the open (or in a vehicle) within 1000 feet your premises.

##### 1. Business Income

Business Income means the:

- a Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b continuing normal operating expenses incurred, including payroll

#### B. COVERED CAUSES OF LOSS

Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:

- 1. excluded in Section C. Exclusions, of the Select Business Policy Building and Personal Property Coverage Form;
- 2. limited in Section D. Limitations of the Select Business Policy Building and Personal Property Coverage Form; or
- 3. excluded in Section C. Special Exclusions, below.

#### C. SPECIAL EXCLUSIONS

We will not pay for:

- 1. Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of the covered building.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- 2. Any loss caused by or resulting from:
  - a. damage or destruction of finished "stock"; or
  - b. the time required to reproduce finished "stock".

This exclusion does not apply to Extra Expense.

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## 3 Any increase of loss caused by or resulting from:

a. delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

b. suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations" we will cover such loss that affects your Business Income during the "period of restoration".

## 4. Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

## 5. Any other consequential loss

## 6. Any loss caused by or resulting from damage or destruction of property in transit

## D. ADDITIONAL COVERAGES

## 1. Civil Authority

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss. The coverage will apply for a period of up to three consecutive weeks from the date of that action.

## 2. Extended Business Income

We will pay for the actual loss of Business Income you incur during the period that:

a. begins on the date property (except finished "stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and

b. ends on the earlier of:

(1) the date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or

(2) 60 consecutive days after the date determined in b (1) above. However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premise are located

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

## 3. Extra Expense

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss

a. We will pay any Extra Expense to avoid or minimize the suspension of business and to continue "operations":

(1) at the described premises; or

(2) at the replacement premises or at temporary locations, including:

(a) relocation expenses; and

(b) costs to equip and operate the replacement or temporary locations.

b. We will pay any Extra Expense to minimize the suspension of business if you cannot continue "operations"

c. We will pay any Extra Expense to:

(1) repair or replace any property; or

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- (2) research, replace or restore the lost information or damaged valuable papers and records; to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

#### E. COVERAGE EXTENSION

##### 1. Newly Acquired Locations

- a. You may extend your Business Income Coverage to apply to property at any location you acquire other than fairs or exhibits.
- b. The most we will pay, at each location, for loss under this Extension is the limit shown in the Declarations for this Coverage Extension.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) this policy expires;
- (2) 90 days expire after you acquire or begin to construct the property; or
- (3) you report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

##### 2. Property At Any Other Location

- a. You may extend your Business Income Coverage to apply to property at any location other than described premises or newly acquired locations.
- b. The most we pay, at each location, for loss under this extension is the limit shown on the Declarations for this Coverage Extension.

#### F. LIMITS OF INSURANCE

The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The limits applicable to the Coverage Extensions are in addition to the Limit of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Extra Expense;
2. Civil Authority; or
3. Extended Business Income

#### G. OPTIONAL COVERAGES

##### 1. Dependent Property Business Income

- a. When indicated in the Declarations, we will pay for the actual loss of business income you sustain due to necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to "dependent property" caused by or resulting from any Covered Cause of Loss.

- b. We will pay no more than the Limit of Insurance for Business Income or the limit in the Declarations for this Optional coverage, whichever is less.

- c. The following is added to Select Business Policy Conditions, Loss Condition G. Resumption of Operations:

2. We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

- a. source of materials; or
- b. outlet for your products.

- d. The following is added to the DEFINITIONS section:

1. "Dependent Property" means property operated by others whom you depend on to:

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- a. deliver materials or services to you, or to others for your account. Services does not mean water, communication or power supply services;
- b. accept your products or services;
- c. manufacture products for delivery to your customers under contract of sale; or
- d. attract customers to your business

2. "Period of Restoration" with respect to "dependent property" is the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the date when the property at the premises of the "dependent property" should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- a. regulates the construction, use or repair, or requires the tearing down of any property; or
- b. requires any Insured or others to test for monitor, clean up, remove, contain, treat detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration"

2. Ordinance or Law - Increased Period of Restoration

- a. When Indicated in the Declarations that this coverage applies, if a Covered Cause of Loss occurs to property at the premises described in the Declaration, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of suspension of "operations" caused by or resulting from the enforcement of any ordinance or law that:

(1) regulates the construction or repair of any property;

(2) requires that tearing down of parts of any property not damaged by a Covered cause of Loss; and

(3) is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of any ordinance or law which requires any Insured or other to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of "pollutants".

b. The PERIOD OF RESTORATION definition is replaced by the following:

3. "Period of Restoration" means the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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"Period of Restoration" includes any increased period required to repair or reconstruct the property to comply with the minimum standards of any ordinance or law, in force at the time of loss, that regulates the construction or repair or requires the tearing down of any property.

The expiration date of this policy will not cut short the "period of restoration".

### 3. Unfinished Stock in Transit

When indicated in the Declarations page, we will pay for the loss of business income you sustain due to direct physical loss or damage by a Covered Cause of Loss to unfinished "stock" while in transit.

The most we will pay is the Limit of Insurance for Unfinished Stock in Transit shown on the Declarations.

### 4. Utility Services

a. When indicated in the Declarations that this Coverage applies, we will pay for loss of Business Income or Extra Expense, caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the property described below, if the property is located outside of a covered building described in the Declarations:

(1) Water Supply Services, meaning the following types of property supplying water to the described premises:

- (a) pumping stations; and
- (b) water mains.

(2) Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:

(a) communication transmission lines, including optic fiber transmission lines;

(b) coaxial cables; and

(c) microwave radio relays except satellites.

(3) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

(a) utility generating plants;

(b) switching stations;

(c) substations;

(d) transformers; and

(e) transmission lines.

b. The Utility Services Limit of Insurance as shown in the Declarations is part of, not in addition to, the Limit of Insurance stated in the Declarations, as applicable to the Business Income

### H. DEFINITIONS

1. "Operations" means your business activities occurring at the described premises.

2. "Period of Restoration" means the period of time that:

a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

b. ends on earlier of:

(1) the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) the date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that;

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- a. regulates the construction, use or repair, or requires the tearing down of any property; or
- b. requires any insured or others to test for monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

- 3. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 4. "Stock" means merchandise held in storage or for sale, raw material and in process or finished goods, including supplies used in their packing or shipping.



## BUSINESS ELECTRONIC SYSTEMS AND TELECOMMUNICATIONS FORMS

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this Insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F DEFINITIONS.

### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

#### 1. Covered Property, as used in this Coverage Form, means:

a. Electronic Equipment - meaning your Electronic Data Processing, Information Technology Hardware, and Telecommunications Equipment, including their component parts;

#### b. Data, Programs and Media

(1) Data is information which has been converted to a form usable in Data Processing Equipment. Data includes Computer Programs and Instructions;

(2) Media is the material on which Data is recorded; for example, magnetic disks and tapes.

c. Property of Others - similar property of others in your care, custody or control, and for which you are legally responsible.

#### 2. Property Not Covered

Covered Property does not include:

- a. Property you loan, rent or lease to others while it is away from your premises;
- b. Data or Media which cannot be replaced with other of the same kind or quality, unless it is specifically described and scheduled with a separate Limit of Insurance in the Declarations.
- c. Satellites, microwave towers and dishes, earth stations, telephone switching stations or similar property.
- d. Accounts, bills, currency, securities, evidence of debt, valuable papers, abstracts, records, deeds, manuscripts or other documents, unless converted to Data, and then only in that form.
- e. Your stock in trade.
- f. Contraband, or property in the course of illegal transportation or trade.

#### 3. Covered Causes of Loss

Covered Causes of Loss means Risks Of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

#### 4. Additional Coverages

##### a. Extra Expense

(1) We will pay the actual and necessary Extra Expense you sustain from a Covered Cause of Loss, due to direct physical loss of or damage to:

(a) Covered Property at your premises or in transit, within the Coverage Territory;

(b) the building in which the Covered Property is located, provided the building is damaged to an extent which prevents access to the Covered Property;

(c) the air conditioning, voltage regulator, line conditioner or uninterruptable power supply systems that specifically service your data processing operation;

(d) the electrical or telecommunication system that specifically services your data processing operation, provided the damage to the system occurs inside, or within 100 feet of, the building housing your data processing operation.

(e) a building adjacent to a scheduled location, when access to the scheduled location is prohibited by civil authority. Coverage is limited to no more than two (2) weeks.

(2) Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property:

(a) To avoid or minimize the suspension of business and to continue "operations":

(i) at the described premises; or

(ii) at replacement premises or at temporary locations, including:

Relocation expenses; and

Costs to equip and operate the replacement or temporary locations

(b) To minimize the suspension of business if you cannot continue "operations"; or

(c) (i) to repair or replace any property; or

(ii) to research, replace or restore the lost information on damaged valuable papers and records;

but only to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage.

(3) The most we will pay for "loss" in any one occurrence under this Additional Coverage is the applicable Extra Expense Limit of Insurance shown in the Declarations.

##### (b) Newly Acquired Electronic Equipment

We will pay for "loss" to Newly Acquired Electronic Equipment at each location scheduled in the Declarations, provided the value of the equipment is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute the additional premium due from the date you acquire the equipment.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is 25% of the highest Limit of Insurance for any location shown in the Declarations, for coverage A.1 a Electronic Equipment, up to a maximum of \$250,000.

**c. Newly Acquired Locations**

We will pay for "loss" to Covered Property at any new location which you acquire, provided the new location is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute any change in your premium from the date you occupy the new location.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**d. Temporary Locations**

We will pay for "loss" to Covered Property while at temporary locations but only for the first 60 days that the property is located there, and not beyond the end of the policy period.

The most we will pay in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**e. Debris Removal**

We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss.

The most we will pay for "loss" at each location under this Additional Coverage is 25% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages up to a maximum of \$100,000.

This Additional Coverage doesn't apply to the cost to:

(1) extract "pollutants" from land or water; or

(2) remove, restore or replace polluted land or water.

**f. Pollutant Clean Up and Removal**

We will pay your necessary expense to extract "pollutants" from land or water at the premises described in the Declarations, if the release, discharge or dispersal of the "pollutants" results from a Covered Cause of Loss to Covered Property that occurs during the policy period. Your expenses will be paid only if they are reported to us within 180 days of the earlier of:

(1) the date of the direct physical loss or damage; or

(2) the end of the policy period.

The most we will pay for each location under this Additional Coverage is 10% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages, up to a maximum of \$10,000, for the sum of all such expenses for each separate 12 month policy period.

No deductible applies to this Additional Coverage

**g. Cost of Preparing a Statement of Loss**

We will pay the cost of preparing a statement of loss or any other exhibits required in connection with any claim under this Coverage Form

The most we will pay for the cost of preparing a statement of loss or other exhibits under this Additional Coverage is \$1,000.

This Additional Coverage does not include public adjuster's fees.

**h. Duplicate Data**

We will pay for your "loss" of duplicate data stored at locations not scheduled on the Declarations. The most we will pay for "loss" under this Additional Coverage in any one occurrence is 25% of the highest Data, Programs, Media location limit up to a maximum of \$100,000.

**i. Protective Equipment**

We will pay your necessary expenses to:

- (1) Repair or replace (in excess of any amount covered by other insurance);

- (2) Recharge:

Your fire protection equipment that is used exclusively to protect the Covered Property.

We will pay if the damage or discharge is the result of a response to a fire, a false alarm, or another Covered Cause of Loss. But, we won't pay for discharge which occurs during installation, repair or recharge. Nor will we pay for gradual leakage from the system.

The most we will pay under this Additional Coverage in any one occurrence is \$25,000.

These Additional Coverages have separate Limits of Insurance.

**B. EXCLUSIONS**

1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

**c. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**d. Earth Movement**

- (1) Any earth movement such as earthquake, landslide, or earth sinking, rising or shifting. But if loss or damage by fire, theft, or explosion results, we will pay for that resulting "loss."
- (2) Volcanic eruption, explosion or effusion. But if "loss" by fire or volcanic action results, we will pay for that resulting "loss."

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- (a) airborne volcanic blast or airborne shock waves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical "loss" to the described property.

e Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) foundations, walls, floors or paved surfaces;
  - (b) basements, whether paved or not; or
  - (c) doors, windows or other openings.

But if "loss" by fire, explosion, theft or sprinkler leakage results, we will pay for that resulting "loss."

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Dishonest acts by you, your partners, officers or trustees, or your or their agents, or others to whom Covered Property is entrusted;

This exclusion will not apply to acts of destruction by an employee of yours; nor will it apply to bailees for hire (for example, truckers or warehousemen) But we will not pay for theft by your employees.

- b. Delay, loss of market or loss of income;
- c. The enforcement of any law which regulates the construction, repair or demolition of buildings or other structures;
- d. Any change in, or interruption of:

- (1) power supply; or
- (2) telecommunications service  
If the change originates more than 100 feet away from the premises containing the Covered Property (equipment) But, if a loss or damage by fire, explosion or theft results, we will pay for that resulting "loss "

- e. Programming errors or incorrect machine instructions. This does not include loss or damage by computer virus or other malicious software.

In addition to the above, we will not pay for any Extra Expense you incur due to:

- f. Interference by strikers or other persons with repairs to damaged property, or with resumption of normal business "operations";
- g. Mechanical or machinery breakdown of any property not named in the Extra Expense Additional Coverage;

h The suspension, lapse or cancellation of any lease, license or contract beyond the "period of restoration";

i Any other consequential "loss "

3 We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss."

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1 above to produce the "loss."

b. Faulty, inadequate or defective workmanship, repair, material used in repair, upgrading or remodeling of Covered Property.

c Wear and tear, gradual deterioration or obsolescence.

#### C. LIMITS OF INSURANCE

Except for the Additional Coverages b,e,f,g,h and i, the most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The Limits of Insurance for Additional Coverages b,e,f,g,h and i, are stated in those Additional Coverages.

#### D. DEDUCTIBLE

We will pay only the amount of the adjusted "loss" in excess of the applicable Deductible shown in the Declarations, up to the applicable Limit of Insurance.

1. The Breakdown Deductible applies to losses resulting from:

a. Mechanical breakdown, (for example, head crash) of the Covered Property;

b. Short circuit, blow-out or other electric or magnetic disturbance, other than lightning, within electrical equipment, apparatus or devices;

c Any repairing, servicing or processing operation;

d Damage to Data or Media when Electronic Equipment breaks down or malfunctions while Data or Media is being run through the system.

2 The All Other "Loss" Deductible applies to all other losses under this Coverage Form.

#### E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### 1. Coverage Territory

We cover Covered Property in transit to, or from, and at:

a Locations shown in the Declarations;

b. Newly acquired locations and temporary locations as provided in the Additional Coverages for Newly Acquired Locations and Temporary Locations; all while in:

c The United States of America;

d Canada;

but we do not cover property in transit by watercraft to or from Alaska or Hawaii.

##### 2. Valuation

The Valuation General Condition is replaced by the following:

a Electronic Equipment  
We will adjust a "loss" to Electronic Equipment on the basis of "replacement cost." The most we will pay is the lesser of:

(1) the amount necessary to repair the equipment; or

(2) the amount necessary to replace the equipment with:

(a) equipment of the same kind and quality; or

(b) if Equipment cannot be replaced by Equipment of the same kind and quality, new Equipment capable of performing the same functions.

(3) The applicable Limit of Insurance

**b. Data**

Data (including Programs) will be valued at the actual cost of replacing the Data. If it is not replaced or reproduced, we will pay the cost of the blank Media.

**c. Media**

The value of the Media will be the cost to replace the Media with material of the same kind or quality.

**3. Our Options**

If we notify you in writing within thirty (30) days after we receive your signed, sworn statement of loss, we may take all or part of the damaged Covered Property at a value that we will agree upon with you. If we choose, we may also repair the damaged Covered Property, or replace it with similar property.

**F. DEFINITIONS**

1. "Loss" means accidental loss or damage.

2. "Operations" means your business activities occurring at the described premises.

3. "Period of Restoration" means the period of time that:

a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

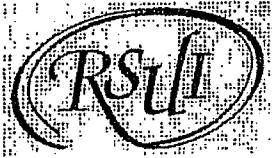
b. ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of Restoration" does not include any increased period required due to the enforcement of any law that regulates the construction, use or repair, or requires the tearing down, of any property.

The expiration date of this policy will not cut short the "period of restoration."

4. "Pollutants" means any solid, liquid gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

5. "Replacement Cost" means the cost to repair or replace the covered property damaged or lost without deduction for depreciation. But, if you choose not to repair or replace the item, we will pay only the actual cash value of the item, or its repair, with proper deduction for depreciation.

CM 00 20  
(Ed. 06 95)**COMMERCIAL ARTICLES COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F - DEFINITIONS.

**A. COVERAGE**

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

**1. Covered Property, as used in this Coverage Form, means:**

- a. cameras, projection machines, films and related equipment and accessories;
- b. musical instruments and related equipment and accessories; and
- c. similar property of others that is in your care, custody or control.

**2. Property Not Covered**

Covered Property does not include contraband or property in the course of illegal transportation or trade.

**3. Covered Causes Of Loss**

Covered Causes of Loss means Risks of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

**4. Additional Coverage - Collapse**

We will pay for direct "loss" caused by or resulting from risks of direct physical "loss" involving collapse of all or part of a building or structure caused by one or more of the following:

- a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this Coverage Form;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of people or personal property;
- e. weight of rain that collects on a roof;
- f. use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form.

**B. EXCLUSIONS**

- 1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority. But we will pay for "loss" caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

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(Ed. 06 95)

## b. Nuclear Hazard

- (1) any weapon employing atomic fission or fusion; or
- (2) nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

## c. War And Military Action

- (1) war, including undeclared or civil war;
- (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

## 2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss
- b. Dishonest or criminal act committed by:
  - (1) you, any of your partners, employees, directors, trustees, or authorized representatives;
  - (2) anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) anyone else to whom the property is entrusted for any purpose.

This exclusion applies whether or not such:

(1) persons are acting alone or in collusion with other persons; or

(2) acts occur during the hours of employment

This exclusion does not apply to:

(1) Covered Property that is entrusted to others who are carriers for hire; or

(2) acts of destruction by your employees. But theft by employees is not covered.

c. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

d. Unauthorized instructions to transfer property to any person or to any place

3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss"

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the "loss."

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

(1) planning, zoning, development, surveying, siting;

(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) materials used in repair, construction, renovation or remodeling; or

CM 00 20  
(Ed. 06 95)

(4) maintenance;

of part or all of any property wherever located

d. Collapse except as provided in the Additional Coverage-Collapse section of this Coverage Form.

e. Wear and tear, any quality in the property that causes it to damage or destroy itself, gradual deterioration; insects, vermin or rodents.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations

#### D. DEDUCTIBLE

We will not pay for "loss" in any one occurrence until the amount of the adjusted "loss" before applying the applicable Limits of Insurance exceeds the Deductible shown in the Declarations. We will then pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance

#### E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### 1. Coverage Territory

We cover property wherever located.

#### 2. Coinsurance

All items that are covered but not individually listed and described must be insured for their total value as to the time of "loss" or you will incur a penalty

The penalty is that we will pay only the proportion of any "loss" to these items that the Limit of Insurance shown in the Declarations for them bears to their total value as of the time of "loss."

#### 3. Additional Acquired Property

If during the policy period you acquire additional property of a type already covered by this form, we will cover such property for up to 30 days, but not beyond the end of the policy period. The most we will pay in a "loss" is the lesser of:

a. 25% of the total Limit of Insurance shown in the Declarations for that type of property; or

b. \$10,000

You will report such property within 30 days from the date acquired and will pay any additional premium due. If you do not report such property, coverage will cease automatically 30 days after the date the property is acquired or at the end of the policy period, whichever occurs first.

#### F. DEFINITIONS

"Loss" means accidental loss or damage



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### COMMERCIAL FINE ARTS COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F - DEFINITIONS.

#### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

1. Covered Property, as used in this Coverage Form, means:

- a. your fine arts; and
- b. fine arts of others that are in your care, custody or control; described in the Declarations.

2. Property Not Covered

Covered Property does not include:

- a. property while on exhibition at fair grounds or on the premises of any national or international exposition; or
- b. contraband, or property in the course of illegal transportation or trade.

3. Covered Causes Of Loss

Covered Causes of Loss means Risks Of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

4. Coverage Extension

Newly Acquired Property

- a. We will cover other objects of art that you acquire during the policy period, but not beyond:
  - (1) 60 days; or
  - (2) the end of the policy period, whichever occurs first.
- b. The most we will pay in a "loss" under this Coverage Extension is the lesser of:

(1) 25% of the scheduled property total Limit of Insurance shown in the Declarations; or

(2) \$25,000

c. You will report such property within 60 days from the date acquired and pay any additional premium that is due. If you do not report that property to us, coverage will end automatically at the earlier of:

(1) 60 days after the date you acquire the property; or

(2) the end of the policy period

The Additional Condition paragraph E 2.b, Coinsurance, does not apply to this Coverage Extension.

#### B. EXCLUSIONS

1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

##### a. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form

##### b. Nuclear Hazard

(1) Any weapon employing atomic fission or fusion; or

(2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

##### c. War and Military Action

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

##### d. Earth Movement

(1) Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting. But if loss or damage by fire, theft, or explosion results, we will pay for that resulting "loss."

(2) Volcanic Eruption, explosion or effusion But if "loss" by fire or volcanic action results, we will pay for that resulting "loss."

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- (a) airborne volcanic blast or airborne shock waves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical "loss" to the described property.

e. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) foundations, walls, floors or paved surfaces;
  - (b) basements, whether paved or not; or
  - (c) doors, windows or other openings.

But if "loss" by fire, explosion, theft or sprinkler leakage results, we will pay for that resulting "loss."

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss
- b. Dishonest acts by:
  - (1) you, your employees or authorized representatives; or
  - (2) anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) anyone entrusted with the property (except a carrier for hire).

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or whether or not such acts occur during the hours of employment.

- c. Any repairing, restoration or retouching of the Covered Property.
- 3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss."
  - a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the "loss."
  - b. Wear and tear, any quality in the property that causes it to damage or destroy itself, pollution damage, gradual deterioration; insects, vermin or rodents.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. DEDUCTIBLE

We will pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance.

#### E. ADDITIONAL CONDITIONS

##### 1. Valuation

General Condition E. Valuation in the Commercial Inland Marine Conditions is replaced by the following:

- a. The agreed value of each item of property that is individually listed and described in the Declarations is the applicable Limit of Insurance shown in the Declarations for that item. In the event of total loss we will pay the applicable Limit of Insurance (less deductible) for that item.
- b. The value of all other Covered Property, including newly acquired property, will be the least of the following amounts:
  - (1) the acquisition cost of that property;
  - (2) the market value of that property;
  - (3) the amount for which you are liable, if the property of another;
  - (4) the cost of reasonably restoring that property to its condition immediately before "loss"; or
  - (5) the cost of replacing that property with substantially identical property.In the event of "loss," the value of property will be determined as of the time of "loss."
- 2. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:
  - a. Coverage Territory

We cover property wherever located within:

(1) the United States of America;

(2) Canada

**b. Coinsurance**

All items that are covered but not individually listed and described must be insured for their total value as of the time of "loss" or you will incur a penalty. The penalty is that we will pay only the proportion of any "loss" to these items that the Limit of Insurance shown in the Declarations for them bears to their total value as of the time of "loss."

**c. Packing and Unpacking**

You agree that Covered Property will be packed and unpacked by competent packers.

**d. Pair or Sets**

Loss Condition G Pair, Sets or Parts in the Commercial Inland Marine Conditions is replaced by the following:

(1) In case of total "loss" of any items that are part of a pair or set that is individually listed and described in the Declarations, we will pay the full Limit of Insurance shown in the Declarations for that pair or set. You will surrender to us the remaining items of the pair or set

(2) In case of "loss" to any part of a pair or set that is not individually listed and described in the Declarations, we may:

(a) repair or replace any part to restore the pair or set to its value before the "loss";  
or

(b) pay the difference between the value of the pair or set before and after the "loss"

**e. Salvage**

Upon payment of a total "loss" to scheduled property, we are entitled to any salvage recovery.

**F. DEFINITIONS**

"Loss" means accidental loss or damage.

COMMERCIAL PROPERTY  
CP 00 40 06 95**LEGAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F. - DEFINITION

**A. COVERAGE**

We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage, including loss of use, to Covered Property caused by accident and arising out of any Covered Cause of Loss. We will have the right and duty to defend any "suit" seeking those damages. However, we have no duty to defend you against a "suit" seeking damages for direct physical loss or damage to which this insurance does not apply. We may investigate and settle any claim or "suit" at our discretion. But:

- (1) The amount we will pay for damages is limited as described in Section C. Limits of Insurance; and
- (2) Our right and duty to defend end when we have used up the Limit of Insurance in the payment of judgments or settlements.

**1. Covered Property**

Covered Property, as used in this Coverage Form, means tangible property of others in your care, custody or control that is described in the Declarations or on the Legal Liability Coverage Schedule.

**2. Covered Causes Of Loss**

See applicable Causes of Loss Form as shown in the Declarations.

**3. Additional Coverage**

**Supplementary Payments.** We will pay, with respect to any claim or any "suit" against you we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by you at our request, including actual loss of earnings up to \$100 a day because of time off from work.

d. All costs taxed against you in the "suit".

e. Prejudgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

**4. Coverage Extensions**

a. **Additional Insureds.** If the Named Insured shown in the Declarations is a partnership or corporation, throughout this Coverage Form, the words "you" and "your" include partners, executive officers, trustees, directors and stockholders of such partnership or corporation, but only with respect to their duties as such.

b. **Newly Acquired Organizations.** Throughout this Coverage Form, the words "you" and "your" also include any organization (other than a partnership or joint venture) you newly acquire or form and over which you maintain ownership or majority interest if there is no other similar insurance available to that organization.

This Coverage Extension ends:

- (1) 90 days after you acquire or form the organization; or
- (2) At the end of the policy period shown in the Declarations;

whichever is earlier.

This Extension does not apply to direct physical loss or damage that occurred before you acquired or formed the organization.

**c. Newly Acquired Property**

- (1) You may extend the insurance that applies to Covered Property, as used in this Coverage Form, to apply to your liability for tangible property of others that comes under your care, custody or control after the beginning of the current policy period. This Extension is subject to the following:

(a) All terms and Conditions of this Coverage Form.

(b) Buildings must be intended for:

(i) Similar use as the building described in the Declarations or on the Legal Liability Coverage Schedule; or

(ii) Use as a warehouse.

The most we will pay as the result of any one accident for loss or damage to the total of all buildings covered under this Extension is \$250,000 at each building.

(c) Personal property must be at a location:

(i) That you own; or

(ii) That is or comes under your care, custody or control;

other than at fairs or exhibitions.

The most we will pay as the result of any one accident for loss or damage to the total of all personal property covered under this Extension is \$100,000 at each building.

- (2) Insurance under this Extension for each item of property of others will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after the property has come under your care, custody or control; or

(c) You report values to us.

We will charge you additional premium for values reported from the date the property comes under your care, custody or control.

This Extension does not apply to direct physical loss or damage that occurred before the property came under your care, custody or control.

**B. EXCLUSIONS AND LIMITATIONS**

See applicable Causes of Loss Form as shown in the Declarations.

**C. LIMITS OF INSURANCE**

The most we will pay in damages as the result of any one accident is the applicable Limit of Insurance shown on the Legal Liability Coverage Schedule, or in the Declarations.

Payments under the Additional Coverage and the Newly Acquired Property Coverage Extension are in addition to the Limits of Insurance.

The existence of one or more:

1. Additional Insureds, or

2. Newly Acquired Organizations,

does not increase the Limit of Insurance.

**D. LOSS CONDITIONS**

The following conditions apply in addition to the Commercial Property Conditions:

**1. Duties In The Event Of Accident, Claim Or Suit**

a. You must see to it that we are notified promptly of any accident that may result in a claim. Notice should include:

(1) How, when and where the accident took place; and

(2) The names and addresses of any witnesses.

Notice of an accident is not notice of a claim.

b. If a claim is made or "suit" is brought against you, you must see to it that we receive prompt written notice of the claim or "suit".

c. You must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to you because of damage to which this insurance may also apply.

- d. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

**2. Legal Action Against Us**

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative.

**3. Other Insurance**

You may have other insurance covering the same loss as the insurance under this Coverage Form. If you do, we will pay our share of the covered loss. Our share is the proportion that the Limit of Insurance under this Coverage Form covering such loss bears to the Limits of Insurance of all insurance covering the loss.

**4. Transfer Of Rights Of Recovery Against Others To Us**

If you have rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them

**E. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions.

**1. Amendment Of Commercial Property Conditions**

None of the Commercial Property Conditions apply to this Coverage Form, except:

- a. Condition A., Concealment, Misrepresentation or Fraud;
- b. Condition C., Insurance Under Two or More Coverages; and
- c. Condition E., Liberalization.

**2. Bankruptcy**

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Coverage Form.

**3. Policy Period, Coverage Territory**

Under this Coverage Form:

- a. We will pay for loss or damage caused by an accident that occurs:
  - (1) During the policy period shown in the Declarations; and
  - (2) Within the coverage territory
- b. The coverage territory is:
  - (1) The United States of America;
  - (2) Puerto Rico; and
  - (3) Canada.

**4. Separation Of Insureds**

The insurance under this Coverage Form applies separately to you and each additional insured, except with respect to the Limits of Insurance.

**F. DEFINITION**

"Suit" includes an arbitration proceeding to which you must submit or submit with our consent.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL COVERED PROPERTY**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
STANDARD PROPERTY POLICY  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY FORM

The following is withdrawn from PROPERTY NOT COVERED if an ("X") is shown in parentheses in the Schedule below:

**SCHEDULE\***

	Prem. No.	Bldg. No.	Description of Property
( )			The cost of excavations, grading, backfilling or filling
(X)	ALL	ALL	Foundations of buildings, structures, machinery or boilers if their foundations are below: (1) The lowest basement floor; or (2) The surface of the ground, if there is no basement.
( )			Underground pipes, flues, or drains
(X)	ALL	ALL	Pillings, piers, wharves or docks
( )			Fences outside of buildings
( )			Retaining walls that are not part of the building
( )			Bridges, roadways, walks, patios or other paved surfaces
( )			Vehicles or self-propelled machines (including aircraft or watercraft) that: (1) Are licensed for use on public roads; (2) Are operated principally away from the described premises; or
			This paragraph does not apply to: (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse; (b) Vehicles or self-propelled machines, other than autos, you hold for sale; or (c) Rowboats or canoes out of water at the described premises;
( )			Animals
( )			Underground pipes, including underground tanks and connections. But underground flues and drains are not covered.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

CM 78 68 (Ed. 07 99)

<b>NAMED INSURED:</b> Fraternal Property Management Association		<b>POLICY PERIOD:</b> 04/01/2004 to 04/01/2005	
Insurance under Time Element Coverage applies to only those Coverages shown by ( X ) below.			
<b>COVERAGES</b>			
(X) 1. "Soft Costs"			
(X) a. Interest on money borrowed to finance construction (including costs which directly result from renegotiation of construction loan(s)),			
(X) b. Advertising and promotional expenses.			
(X) c. Realty taxes and other assessments; license and percent fees.			
(X) d. Architectural or Engineering Supervisory or consulting fees.			
(X) e. Costs resulting from the renegotiation of your lease(s).			
( ) f.			
(X) 2. "Rental Value"			
<b>LIMIT OF INSURANCE:</b>			
The most we will pay for your amount of loss under this endorsement is:			
1. \$100,000	for "Soft Costs"		
2. \$ 50,000	for "Rental Value"		
<b>DEDUCTIBLE:</b> (X) \$2,500 ( ) days			

( ) All jobsites described in the Builders Risk Plus Declarations

Page 1 of 6

(X) The following jobsite only: A location while under construction or reconstruction that is listed on the statement of values on file with Hobbs group/Kirklin & Company, LLC at 12231 Emmet Street, Suite 5, Omaha, NE 68164 .

Words and phrases that appear in quotation marks have special meaning. Refer to Section F., DEFINITIONS, of this endorsement and of your Builders Risk Plus Coverage Form.

The following terms and conditions apply, in addition to all terms and conditions (except the Coinsurance, and Deductible provisions) of your Builders Risk Plus Coverage Form.

## COVERAGE

### 1. "Soft Costs"

When indicated by an " X " in the applicable parentheses of your Time Element Coverage Supplemental Declarations, we will pay your "soft costs" during the "period of delay in completion." Such "soft costs" must result from "loss" from a Covered Cause of Loss which delays the completion of the "project" beyond the "planned completion date."

Our payment for your "soft costs" is subject to the terms and conditions of this endorsement. Also, the amount we pay for items b., d., or f. (shown in the Supplemental Declarations) won't be more than your actual expense for each of these items prior to the "loss."

### 2. "Rental Value"

When indicated by an " X " in the applicable parentheses of your Time Element Coverage Supplemental Declarations, we will pay the amount by which your "rental value" is actually reduced during the "period of delay in completion." Such reduction in "rental value" must result from "loss" from Covered Cause of Loss which delays the completion of the "project" beyond the "planned completion date."

But if your Builders Risk Plus policy was endorsed to permit occupancy and the building or structure was occupied for its intended purpose at the time of "loss," we will pay the amount by which your "rental value" is actually reduced during the "post-loss period of construction."

### 3. Additional Coverages

#### a. Expense to Reduce the "Loss Amount"

We will pay the necessary expense you incur during the "post-loss period of construction" if you would not have incurred such expense had there not been "loss" from any of the Covered Causes of Loss which delayed the completion of the "project" beyond the "planned completion date." But we will not pay more for your expense than the amount by which such expense reduces the "loss amount" we would have otherwise paid under this endorsement.

b. Civil Authority

We will pay the "loss amount" incurred by you during the first two consecutive weeks after the "planned completion date" when a civil authority prohibits access to your "jobsite." The denied access must result from "loss" by a Covered Cause of Loss to property at a location other than the jobsite described in your Time Element Coverage Supplemental Declarations.

**A. EXCLUSIONS**

We will not pay for the "loss amount" that is directly or indirectly due to an increase in the "post-loss period of construction" caused by any of the following. Such "loss amount" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the following:

1. Interference by strikers or other persons affecting the:
  - a. construction or repair of the Covered Property; or
  - b. operation or use of the "project" if your Builders Risk Plus policy is endorsed to permit occupancy, and the building or structure was occupied for its intended purpose at the time of "loss."
2. Irregularities in production, shipment or transportation of any property to be used in the construction or repair of the Covered Property.
3. Suspension, lapse or cancellation of any lease, permit, license, contract or order.
4. Breach of contract, late or noncompliance with orders or penalties of any nature.
5. Weather conditions.
6. Deficiencies in the original construction designs, specifications or materials.
7. Enforcement of any law that:
  - a. regulates the construction, use or repair, or requires the tearing down of any property;
  - b. requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of "pollutants."
8. Lack of funds or lack of work force.

**B. LIMITS OF INSURANCE**

The most we will pay for the "loss amount" incurred by you is the Limit of Insurance shown in the Time Element Coverage Supplemental Declarations.

Any payment made under this endorsement is in addition to the applicable Limits of Insurance shown elsewhere in this policy.

### C. DEDUCTIBLE

We will pay the amount of the adjusted "loss" in excess of the Deductible amounts shown in the Declarations, up to the applicable Limit of Insurance.

This deductible does not apply to insurance afforded under Section A 4., Additional Coverages.

### D. ADDITIONAL CONDITIONS

#### 1. Your Duties in the Event of "Loss"

You must do the following in the event of "loss" to Covered Property:

- a. Make every effort to meet the "planned completion date." This includes, but is not limited to:

- (1) resumption of, as soon as possible, all or any part of the construction or repair;
- (2) use of any machinery, equipment, supplies or materials that could reduce the "period of delay in completion"; and

- (3) resumption of, as soon as possible, the operation or use of any part of the "project," if your Builders Risk Plus policy states that permission to occupy is granted, and the building or structure was occupied for its intended purpose at the time of "loss."

If you do not make every effort to meet the "planned completion date," or you do not resume the operation or use of any part of the "project" as soon as possible, we will only pay the "loss amount" that we would have otherwise paid if you had complied with the above conditions.

- b. Notify us of any payment you receive from others due to a delay in the completion of construction beyond the "planned completion date."

#### 2. Determining the "Loss Amount"

The "loss amount" will be determined based on:

- a. your actual and anticipated costs for the project had "loss" from any of the Covered Causes of Loss not occurred;
- b. Either:
- (1) your likely "rental value" during the "period of delay in completion" had "loss" from any of the Covered Causes of Loss not occurred; or
  - (2) your likely "rental value" during the "post-loss period of construction" had "loss" from any of the Covered Causes of Loss not occurred, if your Builders Risk Plus policy states that permission to occupy is granted, and the building was occupied for its intended purpose at the time of "loss."

- c. your actual "rental value" before "loss" from any of the Covered Causes of Loss occurred, if your Builders' Risk Plus policy states that permission to occupy is granted, and the building was occupied for its intended purpose at the time of "loss";
- d. other relevant sources of information that you must provide including, but not limited to:
  - (1) your financial records and accounting procedures;
  - (2) bills, invoices and other vouchers; and
  - (3) deeds, liens and contracts.
- e. any amounts by which the "loss amount" is reduced due to your failure to perform Your Duties in the Event of Loss outlined in this policy.

### 3. Liquidated Damages

If the construction contract for the "project" contains a clause that requires payments to you because of a delay in the completion of the "project" beyond the "planned completion date," we will subtract the amount due from others, whether you have collected it or not, from the "amount of loss" we would have otherwise paid.

## E. DEFINITIONS

**"Loss Amount"** means the sum of your actual "soft costs" or "rental value," as covered by this endorsement.

**"Period of delay in completion"** means the period of time that:

- a. begins with the "planned completion date"; and
- b. ends on the date when the "project" should be completed using reasonable speed and similar materials and workmanship.

**"Planned completion date"** means the date the "project" would be put into operation or use in the normal course of construction if "loss" from any of the Covered Causes of Loss had not occurred.

**"Post-loss period of construction"** means the period of time that:

- a. begins with the date of the "loss" by any Covered Cause of Loss; and
- b. ends on the date the "project" should be completed using reasonable speed and similar materials and workmanship.

**"Project"** means the total construction of all Covered Property at the jobsite or described in the Time Element Supplemental Declarations.

"Rental value" means the sum of:

- a. the total rental income from the tenant occupancy of the completed "project," as furnished and equipped by you;
- b. the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be your obligations; and
- c. the fair rental value of any portion of the completed "project" which would have been occupied by you.

But Rental Value does not include normal operating expenses which are discontinued as a result of a "loss."

"Soft costs" means your actual and necessary costs in excess of your actual and anticipated amount for the "project" consisting only of the following for which an "X" appears in the applicable parentheses of your Time Element Coverage Supplemental Declarations:

- a. interest on money borrowed to finance construction of the Covered Property (including costs which directly result from renegotiation of construction loan(s) e.g. Loan commitment fees, including prepaid interest and points);
- b. advertising and promotional expenses;
- c. realty taxes and other assessments, license and permit fees;
- d. architectural or engineering supervisory or consulting fees;
- e. costs resulting from renegotiating your lease(s) including:
  - (1) legal, accounting and administration fees;
  - (2) commissions.
- f. other as specified in the Time Element Coverage Supplemental Declarations.

Other Terms Remain The Same



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.

HURRICANE DEDUCTIBLE FORM

This endorsement modifies insurance provided under the Select Business Policy coverage part.

The deductible for loss or damage in any occurrence as respects "hurricane" are:

SCHEDULE

<u>Loc. No(s).</u>	<u>Bldg. No(s).</u>	<u>Deductible</u>
All property in first tier counties from Texas to Virginia		\$10,000

The following is added to the deductible section as respects loss or damage caused by "Hurricane"

A. "Hurricane" is defined as:

1. To be a windstorm that :

a) Has sustained wind speed in excess of 74 miles per hour;

or

b) Has been declared by the National Weather Service to be a hurricane, typhoon or tropical cyclone.

AND

2. To include the time period:

a) 72 hours prior to becoming a hurricane, typhoon or tropical cyclone

and

b) for the entire duration of the hurricane, typhoon or tropical cyclone

and

c) the 72 hours immediately following the downgrading of a hurricane, typhoon or tropical cyclone as declared by the National Weather Service.

Information required to complete this schedule on this endorsement will be shown in the declarations.

COMMERCIAL INLAND MARINE  
CM 00 01 09 00**COMMERCIAL INLAND MARINE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms:

**LOSS CONDITIONS****A. Abandonment**

There can be no abandonment of any property to us.

**B. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**C. Duties In The Event Of Loss**

You must see that the following are done in the event of loss or damage to Covered Property:

1. Notify the police if a law may have been broken.
2. Give us prompt notice of the loss or damage. Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the loss or damage occurred.
4. Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
5. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

7. We may examine any Insured under oath, while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this Insurance or the claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.
8. Send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
9. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit.
10. Cooperate with us in the investigation or settlement of the claim.

**D. Insurance Under Two Or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**E. Loss Payment**

1. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
2. We will not pay you more than your financial interest in the Covered Property.
3. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

5. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss if you have complied with all the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of the loss; or
- b. An appraisal award has been made.

6. We will not be liable for any part of a loss that has been paid or made good by others.

#### F. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### G. Pair, Sets Or Parts

##### 1. Pair Or Set

In case of loss or damage to any part of a pair or set we may:

- a. Repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. Pay the difference between the value of the pair or set before and after the loss or damage.

##### 2. Parts

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

#### H. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### I. Reinstatement Of Limit After Loss

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

#### J. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance; or
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you

This will not restrict your insurance.

#### GENERAL CONDITIONS

##### A. Concealment, Misrepresentation Or Fraud

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part

##### B. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

##### C. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the direct loss or damage.

**D. No Benefit To Bailee**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**E. Policy Period**

We cover loss or damage commencing:

1. During the policy period shown in the Declarations; and
2. Within the coverage territory.

**F. Valuation**

The value of property will be the least of the following amounts:

1. The actual cash value of that property;

2. The cost of reasonably restoring that property to its condition immediately before loss or damage; or

3. The cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.

### FLOOD COVERAGE ENDORSEMENT

Your policy is amended as follows:

#### A. COVERAGE

##### 1. Covered Causes Of Loss include:

###### a. Flood

Flood means a general and temporary condition of partial or complete inundation of normally dry land area from inland or tidal waters.

###### b. Surface Water & Mudslide

(1) Surface water means the unusual and rapid accumulation of water above the ground surface.

(2) Mudslide includes mudflow caused by surface water and is similar to a river of liquid and flowing mud on the surface of normally dry land area.

###### c. Tsunami

Tsunami means a large wave caused by earthquake or volcanic eruption.

###### d. Release of water impounded by a dam.

##### 2. Limit of Insurance

(Is shown only if it is different from the limit(s) for other Covered Causes of Loss). The most we will pay for water damage from a Covered Cause in any one "loss" is the lesser of the limit shown below or the limit in the Declarations.

Sublimits Premises Location

\$5,000,000

\$

\$

\$10,000 On business personal property at any other location not specifically identified above.

\$5,000,000 In any one policy year.

3. Deductible: See Declarations Page for appropriate deductible based upon applicable flood zone.

Deductible: As respects your claim for "loss" to Covered Property caused by perils listed in paragraph 1. above, we will pay the amount of the adjusted "loss" in excess of the applicable deductible, or National Flood Insurance Program policy with limit equal to or greater than applicable policy deductible, up to the applicable Limit of insurance. This deductible applies per occurrence/per location.

## B. EXCLUSIONS

1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Governmental Action

Seizure or destruction of property by order of governmental authority.

b. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

c. War and Military Action

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(2) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

2. Under this extension of coverage, we will not pay for "loss" caused by or resulting from:

a. Water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks on or into Covered Property (This does not include backup of sewers or drains which is a covered cause of loss under this policy).

c. Landslide

d. The failure of power or other utility service supplied to a covered location, however caused, if the failure occurs away from the covered location.

Special Exclusions: If your policy covers time element loss (such as loss of income, rental value, or extra expense). We will not pay for:

- a. Any loss caused by or resulting from:

(1) damage or destruction of "finished stock"; or

(2) the time required to reproduce "finished stock."

This exclusion does not apply to extra expense coverage.

b. Any increase of loss caused by or resulting from:

- (1) delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
- (2) suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your business income during the "period of restoration."

c. Any extra expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

d. Any other consequential loss.

Other Terms Remain The Same



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Atlanta, GA 30326

CM 76 61 (Ed. 11 99)

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.  
EARTHQUAKE COVERAGE ENDORSEMENT

Your policy is amended as follows:

A. COVERAGE

1. Covered Causes Of Loss include:

- a. Earthquake.
- b. Volcanic Eruption, meaning the eruption, explosion, or effusion of a volcano.
- c. Landslide

All Earthquake shocks, Volcanic Eruptions or Landslides that occur within any 168 hour period will constitute a single Earthquake, Volcanic Eruption or Landslide. The expiration of this policy will not reduce the 168 hour period.

2. Limit of Insurance

(is shown only if it is different from the limit(s) for other Covered Causes of Loss). The most we will pay for loss caused by an Earthquake or Volcanic Eruption is the lesser of the limit shown below or the limit in the Declarations.

Sublimits      Premises Location

\$5,000,000.

\$

\$100,000 On property at any other location not specifically identified above.

\$5,000,000 in any one policy year.

3. Deductible

\$25,000 (If different from deductible or shown on the Declarations page) for all property in all states except California.

Percentage Deductible. 5% of the value of the Covered Property at the location(s) where the loss or damage occurs, but not less than \$25,000 for all property in the state of California.

Deductible: As respects your claim for "loss" to Covered Property caused by Earthquake, Volcanic Eruption or Landslide, we will pay the amount of the assessed "loss" in excess of the applicable deductible up to the applicable Limit of Insurance. The applicable deductible applies per occurrence/per location.

## B. EXCLUSIONS

1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
  - a. Governmental Action  
Seizure or destruction of property by order of governmental authority.
  - b. Nuclear Hazard  
Nuclear reaction or radiation, or radioactive contamination, however caused.
  - c. War and Military Action
    - (1) war, including undeclared or civil war;
    - (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
    - (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.
2. Under this extension of coverage, we will not pay for "loss" caused by or resulting from:
  - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.
  - b. Fire, explosion (other than volcanic explosion), tidal wave, tsunami, flood, surface water, water which backs up through sewers or drains, water below the surface of the ground (including that which flows, leaks or seeps on or into Covered Property), mudslide or mudflow, release of water impounded by a dam, even if attributable to an Earthquake, Volcanic Eruption or Landslide.
  - c. Any Earthquake, Volcanic Eruption or Landslide that begins before the inception of this insurance.
  - d. Earth movement other than Earthquake, such as landslide or earth sinking, rising or shifting. But if loss or damage by another Covered Cause of Loss results, we will pay for that resulting loss.
  - e. The cost to remove volcanic ash, dust or particulate matter that does not cause direct physical loss to Covered Property.

f. Utility Service Failure

The failure of power or other utility service supplied to a covered location, however caused, if the failure occurs away from the covered locations.

3. Special Exclusions: If your policy covers time element loss (such as loss of income, rental value, or extra expense).

We will not pay for:

(a) Any loss caused by or resulting from:

- (1) damage or destruction of "finished stock"; or
- (2) the time required to reproduce "finished stock."

This exclusion does not apply to extra expense coverage.

(b) Any increase of loss caused by or resulting from:

- (1) delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
- (2) suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your business income during the "period of restoration."

(c) Any extra expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

(d) Any other consequential loss.

Other Terms Remain The Same

COMMERCIAL INLAND MARINE  
CM 00 66 06 95**ACCOUNTS RECEIVABLE COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section E -- DEFINITIONS.

**A. COVERAGE****1. We will pay:**

- a. All amounts due from your customers that you are unable to collect;
- b. Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- c. Collection expenses in excess of your normal collection expenses that are made necessary by the "loss"; and
- d. Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from Covered Causes of Loss to your records of accounts receivable

**2. PROPERTY NOT COVERED**

Coverage does not apply to:

- a. Records of accounts receivable in storage away from the "premises" shown in the Declarations; or
- b. Contraband, or property in the course of illegal transportation or trade.

**3. COVERED CAUSES OF LOSS**

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL "LOSS" to your records of accounts receivable except those causes of "loss" listed in the Exclusions.

**4. ADDITIONAL COVERAGE -- COLLAPSE**

We will pay for direct "loss" caused by or resulting from risks of direct physical "loss" involving collapse of all or part of a building or structure caused by one or more of the following:

- a. Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; all only as Insured against in this Coverage Form;
- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;
- f. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form

**5. COVERAGE EXTENSION****Removal**

If you give us written notice within 10 days of removal of your records of accounts receivable because of imminent danger of "loss", we will pay for "loss" while they are:

- a. At a safe place away from your "premises"; or
- b. Being taken to and returned from that place.

This Coverage Extension is included within the Limit of Insurance applicable to the "premises" from which the records of accounts receivable are removed.

**B. EXCLUSIONS**

- 1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. GOVERNMENTAL ACTION**

Seizure or destruction of property by order of governmental authority.

But we will pay for "loss" caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. NUCLEAR HAZARD**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

**c. WAR AND MILITARY ACTION**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**2. We will not pay for a "loss" caused by or resulting from any of the following:**

- a. Delay, loss of use, loss of market or any other consequential loss.
- b. Dishonest or criminal act committed by:
  - (1) You, any of your partners, employees, directors, trustees, or authorized representatives;
  - (2) Anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) Anyone else to whom the property is entrusted for any purpose.

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. But theft by employees is not covered.

- c. Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of money, securities or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding

- d. Bookkeeping, accounting or billing errors or omissions.

- e. Electrical or magnetic injury, disturbance or erasure of electronic recordings that is caused by or results from:

- (1) Programming errors or faulty machine instructions;
- (2) Faulty installation or maintenance of data processing equipment or component parts;
- (3) An occurrence that took place more than 100 feet from your "premises"; or
- (4) Interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place more than 100 feet from your "premises".

But we will pay for direct "loss" caused by lightning.

- f. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- g. Unauthorized instructions to transfer property to any person or to any place

**3. We will not pay for "loss" that requires any audit of records or any inventory computation to prove its factual existence.**

**4. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss".**

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the "loss"

- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

- c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property wherever located.

d. Collapse except as provided in the Additional Coverage - Collapse section of this Coverage Form.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. ADDITIONAL CONDITIONS

##### 1. DETERMINATION OF RECEIVABLES

General Condition E Valuation in the Commercial Inland Marine Conditions is replaced by the following:

- a. If you cannot accurately establish the amount of accounts receivable outstanding as of the time of "loss", the following method will be used:
  - (1) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the "loss" occurs; and
  - (2) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the "loss" occurred or for any demonstrated variance from the average for that month
- b. The following will be deducted from the total amount of accounts receivable, however that amount is established:
  - (1) The amount of the accounts for which there is no "loss";
  - (2) The amount of the accounts that you are able to re-establish or collect;
  - (3) An amount to allow for probable bad debts that you are normally unable to collect; and
  - (4) All unearned interest and service charges.

#### 2. RECOVERIES

The following is added to Commercial Inland Marine Loss Condition I. Recoveries:

You will pay us the amount of all recoveries you receive for a "loss" paid by us. But any recoveries in excess of the amount we have paid belong to you

3. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### a. COVERAGE TERRITORY

We cover records of accounts receivable:

- (1) Within your "premises"; and
- (2) Away from your "premises" while in transit or within premises of others if those premises are located or the transit is within:
  - (a) The United States of America;
  - (b) Puerto Rico; and
  - (c) Canada.

##### b. COINSURANCE

All accounts receivable, except those in transit, must be insured for at least 80% of their total value as of the time of "loss" or you will incur a penalty.

The penalty is that we will pay only the proportion of any "loss" that the Limit of Insurance shown in the Declarations for Coverage Applicable at All Locations bears to 80% of the total value of all accounts receivable at all locations as of the time of "loss". This penalty will not apply to records of accounts receivable in transit, interest charges, excess collection expenses or expenses to re-establish your records of accounts receivable.

##### c. PROTECTION OF RECORDS

Whenever you are not open for business, and except while you are actually using the records, you must keep all records of accounts receivable in receptacles that are described in the Declarations.

#### E. DEFINITIONS

1. "Loss" means accidental loss or damage.
2. "Premises" means that interior portion of the building at the address shown in the Declarations that you occupy for your business.

COMMERCIAL INLAND MARINE  
CM 00 67 09 00**VALUABLE PAPERS AND RECORDS COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F – Definitions.

**A. Coverage**

We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.

1. Covered Property, as used in this Coverage Form, means "valuable papers and records" that are your property or property of others in your care, custody or control.

2. Property Not Covered

Covered Property does not include:

- a. Property not specifically declared and described in the Declarations if such property cannot be replaced with other property of like kind and quality;
- b. Property held as samples or for delivery after sale;
- c. Property in storage away from the "premises" shown in the Declarations; or
- d. Contraband, or property in the course of illegal transportation or trade.

3. Covered Causes Of Loss

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE to Covered Property except those causes of loss listed in the Exclusions.

4. Additional Coverage – Collapse

We will pay for direct loss or damage caused by or resulting from risks of direct physical loss or damage involving collapse of all or part of a building or structure caused by one or more of the following:

- a. Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; earthquake; all only as insured against in this Coverage Form;
- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;
- f. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form.

5. Coverage Extensions

- a. Removal

If you give us written notice within 10 days of removal of your "valuable papers and records" because of imminent danger of loss or damage, we will pay for loss or damage while it is:

- (1) At a safe place away from your "premises"; or
- (2) Being taken to and returned from that place.

This Coverage Extension is included within the Limits of Insurance applicable to the "premises" from which the Covered Property is removed.

**b. Away From Your Premises**

We will pay up to \$5,000 for loss or damage to Covered Property while it is away from your "premises".

But if a higher Limit of Insurance is specified in the Declarations, the higher limit will apply.

The limit for this Coverage Extension is additional insurance

**B. Exclusions**

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But if nuclear reaction or radiation, or radioactive contamination results in fire, we will pay for the direct loss or damage caused by that fire if the fire would be covered under this Coverage Form.

**c. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

Exclusions B.1.a. through B.1.c. apply whether or not the loss event results in widespread damage or affects a substantial area

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss.

- b. Dishonest or criminal act committed by:

- (1) You, any of your partners, employees, directors, trustees, or authorized representatives;

- (2) A manager or a member if you are a limited liability company;

- (3) Anyone else with an interest in the property, or their employees or authorized representatives; or

- (4) Anyone else to whom the property is entrusted for any purpose

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. But theft by employees is not covered.

- c. Errors or omissions in processing or copying

But we will pay for direct loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this Coverage Form.

- d. Electrical or magnetic injury, disturbance or erasure of electronic recordings.

But we will pay for direct loss or damage caused by lightning.

- e. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- f. Unauthorized instructions to transfer property to any person or to any place

- g. Neglect of an Insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather Conditions But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
    - of part or all of any property wherever located.
- d. Collapse except as provided in the Additional Coverage -- Collapse Section of this Coverage Form.
- e. Wear and tear, any quality in the property that causes it to damage or destroy itself, gradual deterioration; insects, vermin or rodents

#### C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. Deductible

We will not pay for loss or damage in any one occurrence until the amount of the adjusted loss or damage before applying the applicable Limits of Insurance exceeds the Deductible shown in the Declarations. We will then pay the amount of the adjusted loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

#### E. Additional Conditions

##### 1. Valuation -- Specifically Declared Items

The following is added to General Condition F. Valuation in the Commercial Inland Marine Conditions:

The value of each item of property that is specifically declared and described in the Declarations is the applicable Limit of Insurance shown in the Declarations for that item.

#### 2. Recoveries

The following is added to Loss Condition H. Recovered Property in the Commercial Inland Marine Conditions:

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. If so, your loss or damage will be readjusted based on the amount you received for the property recovered, with allowance for recovery expenses incurred.

3. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### a. Coverage Territory

We cover property:

- (1) Within your "premises"; and
- (2) Away from your "premises" while in transit or within premises of others if those premises are located or the transit is within:
  - (a) The United States of America (including its territories and possessions);
  - (b) Puerto Rico; and
  - (c) Canada.

##### b. Protection Of Records

Whenever you are not open for business, and except while you are actually using the property, you must keep all "valuable papers and records" in receptacles that are described in the Declarations.

#### F. Definitions

1. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings, films, maps or mortgages.

But "valuable papers and records" does not mean "money" or "securities", converted data, programs or instructions used in your data processing operations, including the materials on which the data is recorded.

2. "Premises" means that interior portion of the building at the address shown in the Declarations that you occupy for your business.

3. "Money" means:

- a. Currency, coins and bank notes whether or not in current use; and
- b. Travelers checks, register checks and money orders held for sale to the public.

4. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

a. Tokens, tickets, revenue and other stamps whether or not in current use; and

b. Evidences of debt issued in connection with credit or charge cards, which cards are not of your own issue;

but does not include "money".



RSUI Group, Inc  
945 East Paces Ferry Rd  
Suite 1890  
Atlanta, GA 30326

IL 09 03

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNs, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Illinois counties of;		As per schedule on file.	
	Bond	Marion		
	Bureau	Marshall		
	Christian	Menard		
	Clinton	Mercer		
	Douglas	Montgomery		
	Franklin	Peoria		
	Fulton	Perry		
	Gallatin	Putnam		
	Grundy	Randolph		
	Jackson	Rock Island		
	Jefferson	St. Clair		
	Knox	Saline		
	LaSalle	Sangamon		
	Logan	Tazewell		
	McDonough	Vermilion		
	Macoupin	Washington		
	Madison	Williamson		
			Total	

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INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ILLINOIS CHANGES – MINE SUBSIDENCE

This endorsement modifies Insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

#### A. Coverage

Section A. is replaced by the following:

##### A. Mine Subsidence Coverage

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

##### 1. Covered Property

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Piling and piers;
- d. Underground pipes, flues and drains.

##### 2. Property Not Covered

Covered Property does not include:

- a. Land; or
- b. Personal Property.

##### 3. Covered Cause Of Loss

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

##### 4. Additional Coverage

###### DEBRIS REMOVAL

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence

#### B. Exclusions

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

##### EARTH MOVEMENT

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

#### C. Limits Of Insurance

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;

- a. Less than \$250; or
- b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Indiana counties of;		As per schedule on file.	
	Clay	Owen		
	Crawford	Parke		
	Daviess	Perry		
	Dubois	Pike		
	Fountain	Posey		
	Gibson	Putnam		
	Greene	Spencer		
	Knox	Sullivan		
	Lawrence	Vanderburgh		
	Martin	Vermillion		
	Monroe	Vigo		
	Montgomery	Warren		
	Orange	Warrick		

Total

INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## INDIANA CHANGES – MINE SUBSIDENCE

This endorsement modifies Insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

### A. Coverage

Section A. is replaced by the following:

#### A. Mine Subsidence Coverage

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

##### 1. Covered Property

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Piling and piers;
- d. Underground pipes, flues and drains.

##### 2. Property Not Covered

Covered Property does not include:

- a. Land; or
- b. Personal Property.

### 3. Covered Cause Of Loss

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

### 4. Additional Coverage

#### DEBRIS REMOVAL

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence.

### B. Exclusions

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

#### EARTH MOVEMENT

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part

### C. Limits Of Insurance

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies.

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

IL 09 03 (Ed. 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Kentucky counties of;		As per schedule on file.	
	Bell	Johnson		
	Boyd	Knott		
	Breathitt	Knox		
	Butler	Lawrence		
	Carter	Lee		
	Christian	Leslie		
	Clay	Martin		
	Daviess	McCreary		
	Edmonson	McLean		
	Elliott	Morgan		
	Floyd	Muhlenberg		
	Greenup	Ohio		
	Hancock	Perry		
	Harlan	Union		
	Henderson	Webster		
	Hopkins	Whitley		
	Jackson	Wolfe		

Total

INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## KENTUCKY CHANGES – MINE SUBSIDENCE

This endorsement modifies Insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

### A. Coverage

Section A. is replaced by the following:

#### A. Mine Subsidence Coverage

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

##### 1. Covered Property

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Piling and piers;
- d. Underground pipes, flues and drains.

##### 2. Property Not Covered

Covered Property does not include:

- a. Land; or
- b. Personal Property.

### 3. Covered Cause Of Loss

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

### 4. Additional Coverage

#### DEBRIS REMOVAL

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence.

### B. Exclusions

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

#### EARTH MOVEMENT

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

### C. Limits Of Insurance

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies.

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



RSUI, Inc.  
945 East Paces Ferry Rd  
Suite 1890  
Atlanta, GA 30326

IL 09 03 (E)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND HOUSEHOLD  
PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES COVERAGE  
FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the West Virginia counties of;		As per schedule on file.	Included
	Barbour	Mercer		
	Boone	Mineral		
	Braxton	Mingo		
	Brooke	Monongalia		
	Clay	Nicholas		
	Doddridge	Ohio		
	Fayette	Pocahontas		
	Glimmer	Preston		
	Grant	Pulnam		
	Greenbrier	Raleigh		
	Hancock	Randolph		
	Harrison	Summers		
	Kanawha	Taylor		
	Lewis	Tucker		
	Lincoln	Tyler		
	Logan	Upshur		
	Marlon	Wayne		
	Marshall	Webster		
	Mason	Wetzel		
	McDowell	Wyoming		
			Total	

INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WEST VIRGINIA CHANGES – MINE SUBSIDENCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

**A. Coverage**

Section A. is replaced by the following:

**A. Mine Subsidence Coverage**

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

**1. Covered Property**

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Pillings and pliers;
- d. Underground pipes, flues and drains.

**2. Property Not Covered**

Covered Property does not include:

- a. Land; or
- b. Personal Property.

**3. Covered Cause Of Loss**

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

**4. Additional Coverage****DEBRIS REMOVAL**

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence

**B. Exclusions**

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

**EARTH MOVEMENT**

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

**C. Limits Of Insurance**

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **ASBESTOS EXCLUSION**

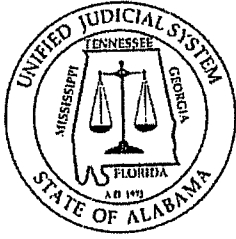
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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

This policy does not apply to any loss, demand, claim or suit arising out of or related in any way to asbestos or asbestos-containing materials.

The company shall have no duty of any kind with respects to any such loss, demand, claim or suit.

**AlaFile E-Notice**

55-CV-2006-000246.00

To: JUAN ORTEGA  
jco@alfordclausen.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

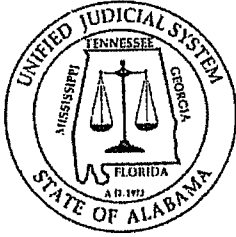
DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following answer was FILED on 1/4/2007 2:58:06 PM

Notice Date: 1/4/2007 2:58:06 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: HILB, ROGAL & HOBBS WHOLESAL (PRO SE)  
CORPORATION SERVICE CO  
2711 CENTERVILLE RD/400  
WILMINGTON, DE 19808

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

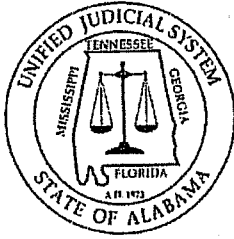
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: KIRKLIN & COMPANY, LLC (PRO SE)  
2711 CENTERVILLE RD  
STE. 400  
WILMINGTON, DE 19808

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

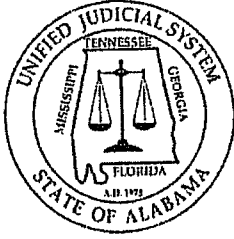
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334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

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brenda.peacock@alacourt.gov

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To: CERVERA N J  
ncervera@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

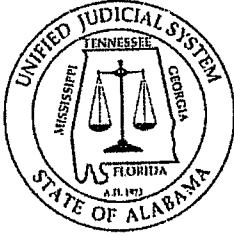
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

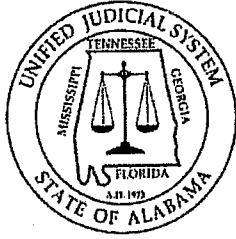
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TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: LLOYD JAMES S  
jlloyd@lgwpc.com

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA****DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00**

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**AlaFile E-Notice**

55-CV-2006-000246.00

To: ORTEGA JUAN C  
jco@alfordclausen.com

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**NOTICE OF ELECTRONIC FILING**

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

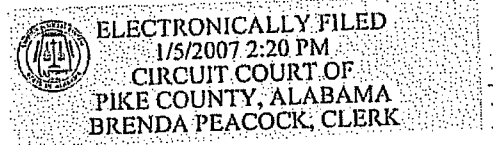
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120 WEST CHURCH STREET  
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334-566-4622  
brenda.peacock@alacourt.gov



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE & METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHOADES; HILB,  
ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.;  
KIRKLIN & CO., LLC, a/k/a  
HRH/KIRKLIN & CO., LLC and  
RSUI GROUP, INC.

Defendants.

CIVIL ACTION NUMBER:  
CV 06-246-RWB

**HRH/KIRKLIN AND COMPANY, L.L.C.**  
**ANSWER TO PLAINTIFFS' COMPLAINT AND AMENDED**  
**COMPLAINT**

COME NOW HRH/Kirklin and Company, L.L.C., ("HRH"), and  
responds to Plaintiffs' Complaint and Amended Complaint as follows:

**STATEMENT OF THE PARTIES**

1. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.
2. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.
3. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

4. Denied.

5. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

6. Denied.

7. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 1**

8. No response required.

9. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

10. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

11. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

12. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

13. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

14. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

15. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and therefore it is denied.

**COUNT 2**

16. No response required.

17. Denied.

18. Denied.

19. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 3**

20. No response required.

21. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

22. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 4**

23. No response required.

24. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

25. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

26. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

27. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 5**

28. No response required.

29. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

30. Denied.

31. Denied.

32. Denied.

**AFFIRMATIVE DEFENSES**

1. This Defendant avers Plaintiffs' complaint fails to state claims for which relief can be granted and demands strict proof thereof.

2. This Defendant avers Plaintiffs' claims are barred by the applicable statutes of limitations.

3. This Defendant avers Plaintiffs' claims are barred by contributory negligence and/or assumption of the risk.

4. This Defendant avers superseding and/or intervening causes, including, but not limited to, a failure of Plaintiffs to perform under the terms of its

contract.

5. There is no causal connection or relationship between any alleged negligence, fraud and breach of contract on the part of HRH and the Plaintiffs' alleged damages.

6. This Defendant pleads that it is not guilty of the matters and things alleged in Plaintiffs' complaint and demands strict proof thereof.

7. This Defendant pleads failure to mitigate damages.

8. This Defendant pleads waiver.

9. This Defendant pleads claims are barred by the loss of privity as between HRH and Donnie and Metra Hughes, d/b/a Historical Rentals, Inc.

10. This Defendant pleads accord and satisfaction.

11. This Defendant reserves its rights to amend its answer until all discovery has been completed.

/s/ Tom Burgess  
Tom Burgess (BUR011)  
Attorney for HRH/Kirklin & Co., L.L.C.

**OF COUNSEL:**

Burgess & Hale, L.L.C.  
505 North 20th Street, Suite 300  
Birmingham, Alabama 35203  
Telephone (205) 715-4466; Fax; (205) 715-4454

**CERTIFICATE OF SERVICE**

I hereby certify that on **January 5, 2007** I have served a copy of the above and foregoing on counsel for all parties by:

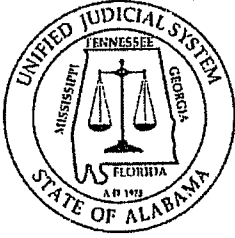
- \_\_\_\_\_ Facsimile transmission;
- \_\_\_\_\_ Hand delivery;
- \_\_\_\_\_ Placing a copy of same in the United States Mail, properly addressed and first class postage prepaid to;
- ✓ \_\_\_\_\_ Using the CM/ECF system which will send notification of such to the following:

N. J. Cervera, Esq.  
Matthew Baker, Esq.  
Cervera, Ralph & Reeves, LLC  
914 South Brundidge Street  
Troy, Alabama 36081  
(334) 566-0116

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Taylor, Gray & Whitehead, P.C.  
2501 Twentieth Place North, Ste. 300  
Birmingham, Alabama 35203  
(205) 967-8822/ Fax: 967-2389

Juan C. Ortego, Esq.  
Alford, Clausen & McDonald  
Suite 5000 St. Louis Center  
Mobile, Alabama 36608  
(251) 432-1600/Fax: (251) 432-1700

/s/ Tom Burgess  
OF COUNSEL

**AlaFile E-Notice**

55-CV-2006-000246.00

To: TOM BURGESS  
tburgess@burgesshale.com

---

**NOTICE OF ELECTRONIC FILING**

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

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CIRCUIT COURT CLERK  
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120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

---

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

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**AlaFile E-Notice**

55-CV-2006-000246.00

To: BURGESS TOM  
tburgess@burgesshale.com

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**NOTICE OF ELECTRONIC FILING**

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following answer was FILED on 1/5/2007 2:21:00 PM

Notice Date: 1/5/2007 2:21:00 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: CERVERA N J  
ncervera@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

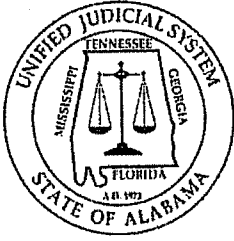
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To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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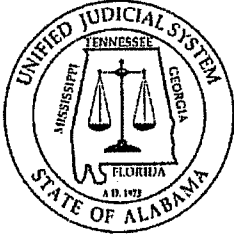
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jlloyd@lgwpc.com

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brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: ORTEGA JUAN C  
jco@alfordclausen.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

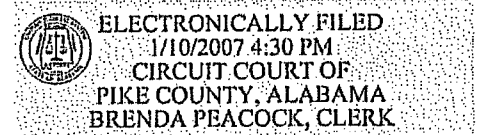
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brenda.peacock@alacourt.gov



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC.,

Plaintiffs,

vs

GAB ROBINS NORTH AMERICA, INC.,  
et al.,

Defendants.


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\*

NO CV-2006-246-RWB

NOTICE OF SERVICE OF DISCOVERY

COME NOW the Defendant, RSUI Indemnity Company and gives notice to this  
Honorable Court of service of the following discovery upon counsel for Plaintiff:

- 1 Defendant's Interrogatories to Plaintiff; and
- 2 Defendant's Request for Production to Plaintiff



HELEN JOHNSON-ALFORD (ALF002)  
JUAN C ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

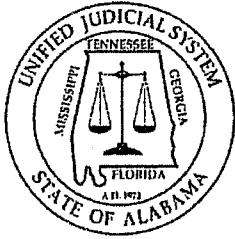
N J Cervera, Esq  
Matthew Baker, Esq.  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

James S. Lloyd, Esq  
Karen D. Farley, Esq  
LLOYD, GRAY & WHITEHEAD, P.C  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Tom Burgess, Esq  
BURGESS & HALE, L L C  
505 North 20th Street, Suite 300  
Birmingham, AL 35203

Done this 10<sup>th</sup> day of January, 2007.

  
COUNSEL

**AlaFile E-Notice**

55-CV-2006-000246.00

To: JUAN ORTEGA  
jco@alfordclausen.com

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

**DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL**  
**55-CV-2006-000246.00**

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**PIKE COUNTY, ALABAMA**  
**120 WEST CHURCH STREET**  
**TROY, AL 36340**

334-566-4622  
brenda.peacock@alacourt.gov

**AlaFile E-Notice**

55-CV-2006-000246.00

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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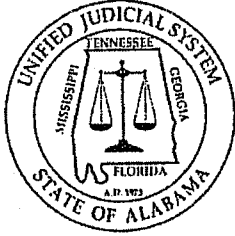
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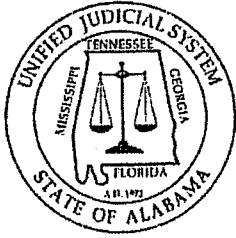
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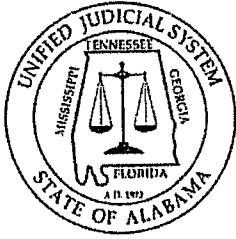
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To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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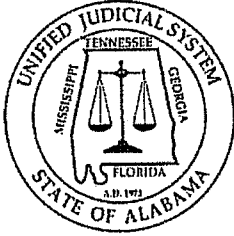
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To: LLOYD JAMES S  
jlloyd@lgwpc.com

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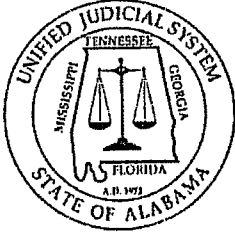
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jco@alfordclausen.com

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**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

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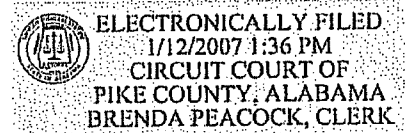
<b>STATE OF ALABAMA</b> Unified Judicial System		Revised 2/14/05	<b>Case No.</b>  CV200600024600
55-PIKE		<input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	
DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL		<b>CIVIL MOTION COVER SHEET</b> <i>Name of Filing Party:</i> D005 - RSUI GROUP, INC	
<i>Name, Address, and Telephone No. of Attorney or Party If Not Represented</i> JUAN ORTEGA ONE ST. LOUIS CENTRE, SUITE 5000 MOBILE, AL 36602 Attorney Bar No : ORT001		<input type="checkbox"/> Oral Arguments Requested	

**TYPE OF MOTION**

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. <input type="checkbox"/> Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00) Renewed Dispositive Motion(Summary Judgment, <input type="checkbox"/> Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input checked="" type="checkbox"/> Other      Notice of Constitutional Challenge pursuant to Rule N/A      (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship <input type="checkbox"/>	Date: 1/12/2007 1:34:17 PM	Signature of Attorney or Party: /s/ JUAN ORTEGA
---	-------------------------------	--

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
 \*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC ,

Plaintiffs,

vs

GAB ROBINS NORTH AMERICA, INC ,  
et al ,

Defendants

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NO. CV-2006-246-RWB


NOTICE OF CONSTITUTIONAL CHALLENGE

COMES NOW RSUI Indemnity Company ("RSUI"), a named defendant in the above-styled action, by and through counsel, and in compliance with Alabama Code § 6-6-227 (1975), hereby gives notice to the Attorney General for the State of Alabama of its constitutional challenges to the award of punitive damages under Alabama substantive law and procedures, including the tort reform provisions governing the award and review of punitive damages in civil actions in this state. As grounds therefore, Defendant RSUI sets forth the following:

- 1 RSUI has filed an answer to Plaintiff's First Amended Complaint in this cause challenging the award of punitive damages under the laws and statutes of this State. Attached hereto and incorporated herein as if set out in full is a copy of RSUI's Answer. Exhibit "1"
- 2 RSUI states that Alabama's tort reform statutes governing punitive damages, including Alabama Code § 6-11-20, *et seq* (1975), do not remedy the constitutional deficiencies asserted in its answer to Plaintiff's First Amended Complaint, and this notice should be construed as a constitutional challenge to

those statutory provisions on all the grounds stated in RSUI's Answer to Plaintiff's First Amended Complaint. See Exhibit "1"

Respectfully submitted,



HELEN JOHNSON ALFORD (ALF002)  
JUAN C. ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St. Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

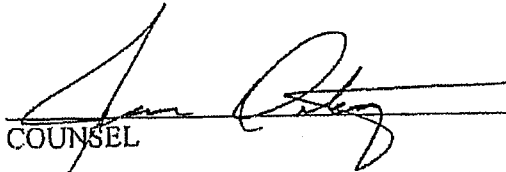
N.J. Cervera, Esq.  
Matthew Baker, Esq.  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

Honorable Troy R. King  
Attorney General  
Alabama State House  
11 South Union Street, 3<sup>rd</sup> Floor  
Montgomery, AL 36130

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Tom Burgess, Esq.  
BURGESS & HALE, L.L.C.  
505 North 20<sup>th</sup> Street, Suite 300  
Birmingham, AL 35203

Done this 11<sup>th</sup> day of January, 2007



COUNSEL

2

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC ,

Plaintiffs,

vs

GAB ROBINS NORTH AMERICA, INC.,  
et al ,

Defendants

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NO CV-2006-246-RWB

ANSWER OF RSUI INDEMNITY COMPANY TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT

COMES NOW Defendant RSUI Indemnity Company (hereinafter "RSUI"), and in response to Plaintiff's First Amended Complaint and each cause of action contained therein states as follows:

FIRST DEFENSE

Responding to the First Amended Complaint paragraph by paragraph, and reserving all defenses, Defendant states as follows:

STATEMENT OF THE PARTIES

1 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same

2 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same



3 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 3 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

4 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

5 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

6 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

7 RSUI admits that it is a Delaware corporation and doing business in Alabama. Defendant denies the remaining allegations contained in paragraph 7 of Plaintiff's First Amended Complaint.

#### COUNT 1

8 Defendant reasserts and incorporates its responses to paragraphs 1 - 7 as set forth above.

9 Defendant admits that an insurance policy effective April 1, 2004, existed which provided insurance to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's First Amended Complaint.

10 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained paragraph 10 of Plaintiff's First Amended Complaint.

11 Defendants admits that GAB was the adjusting company for Plaintiff's claims under said policy. Defendant denies the remaining allegations contained paragraph 11 of Plaintiff's First Amended Complaint.

12 Defendant admits that a named storm made landfall on September 16, 2004. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 12 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

13 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 13 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

14 Denied

15 Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count One of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner.

#### COUNT 2

16 - 19 The allegations contained in paragraphs 16 - 19, including the last unnumbered paragraph of Count Two, are not directed to this Defendant; thus, no response is required. To the

extent a response is required, Defendant denies same, and denies that Plaintiff is entitled to recover from it in any manner

COUNT 3

20 Defendant reasserts and incorporates its responses to paragraphs 1 - 19 as set forth above

21 Defendant admits that Plaintiffs made a claim with agents of RSUI. Defendant denies the remaining allegations contained in paragraph 21 of Plaintiff's First Amended Complaint

22 Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count Three of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

COUNT 4

23 Defendant reasserts and incorporates its responses to paragraphs 1 - 22 as set forth above

24 Defendant admits that Plaintiff reported damage to their property to an agent of Defendant RSUI. Defendant denies the remaining allegations contained in paragraph 24 of Plaintiff's First Amended Complaint

25 The allegations contained in paragraph 25 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required. To the extent a response is required, Defendant admits that Defendant GAB acted as an adjuster. Defendant denies the remaining allegations contained in paragraph 25 of Plaintiff's First Amended Complaint

26 The allegations contained in paragraph 26 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required To the extent a response is required, Defendant denies same

27 Denied

#### COUNT 5

28 Defendant reasserts and incorporates its responses to paragraphs 1 - 27 as set forth above

29 Defendant admits that Plaintiff's reported damage to their property to Defendant GAB Defendant denies the remaining allegations contained in paragraph 29 of Plaintiff's First Amended Complaint

30 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others Defendant denies the remaining allegations contained paragraph 30 of Plaintiff's First Amended Complaint

31 Defendant admits Plaintiff's claims arising out of a date of loss of September 23, 2004, did not meet Plaintiff's deductible under the policy; therefore, no payment has been made

32 Denied

Defendant denies the allegations contained in the last unnumbered paragraph of Count Five of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

#### FIRST DEFENSE

RSUI committed no act that proximately caused or contributed to any damages sustained by Plaintiff

**SECOND DEFENSE**

The injuries and damages complained of herein resulted from the acts or omissions of persons or entities other than RSUI. Alternatively, said acts or omissions or persons or entities other than RSUI constitute an independent, superseding cause to the injuries and damages complained of herein; hence, Plaintiff ought not to recover.

**THIRD DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable Alabama statute.

**FOURTH DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable state or federal rules, regulations, or standards.

**FIFTH DEFENSE**

Each and every claim stated in Plaintiff's First Amended Complaint is barred in whole or in part by the applicable statute of limitations and/or the doctrine of laches.

**SIXTH DEFENSE**

RSUI is entitled to a set-off and credit for any and all sums paid to or on behalf of Plaintiff by any other party or collateral source as a result of or related to this lawsuit.

**SEVENTH DEFENSE**

RSUI pleads accord and satisfaction.

**EIGHTH DEFENSE**

RSUI pleads all applicable portions of policy of insurance issued by RSUI to Fraternal Property Management Association, policy number NHD332474 for the policy period April 1,

2004, through April 1, 2005. Said policy is attached hereto as Defendant RSUI's Exhibit "A" to its Answer herein.

**NINTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

**B Appraisal**

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of physical loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and the amount of physical loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1 pay its chosen appraiser; and
- 2 bear the other expenses of the appraisal and umpire equally

**TENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

**C Duties in the Event of Loss or Damage**

- 1 You must see that the following are done in the event of loss or damage to Covered Property:
  - a Notify the police if a law may have been broken
  - b Give us prompt notice of the loss or damage. Include a description of the property involved.

- c As soon as possible, give us a description of how, when, and where the loss or damage occurred
- d Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such loss, for consideration in a settlement of the claim. However, we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a Covered Cause of Loss. This will not increase the Limit of Insurance. Also, if feasible, set damage to property aside and in the best possible order, for examination
- e At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claim.
- f As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records
- g Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms
- h Cooperate with us in the investigation or settlement of the claim

#### ELEVENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97) which states that:

#### Loss Conditions:

#### F Other Insurance:

- 1 You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Covered Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis

- 2 If there is other insurance covering the same loss or damage, other than that described in 1 above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage.

**TWELFTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

I Vacancy

2 Vacancy provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- a We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (1) vandalism;
- (2) sprinkler leakage, unless you have protected the system against freezing;
- (3) building glass breakage;
- (4) water damage;
- (5) theft; or
- (6) attempted theft.

**THIRTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

K Valuation:

- 2 If replacement cost is indicated in the Declarations as the method valuation we will determine the value of Covered Property in the event of loss or damage as follows:

- a At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b through j below:
- j The cost of repair or replacement does not include any increase costs attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

**FOURTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions under amount:**

- I We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss

- a Ordinance or law

The enforcement of any ordinance or law:

- (1) regulating construction; use or repair of any property; or
- (2) requiring the tearing down of any property including the costs of removing its' debris

This exclusion, ordinance or law, applies whether the loss results from:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) the increased cost incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolishing of property or removal of its debris, following a direct physical loss or damage to that property

**FIFTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions:**

2 We will not pay for loss or damage caused by or resulting from any of the following:

- d (1) Wear and tear;
- (2) rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality and property that causes it to damage or destroy itself;

#### SIXTEENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

C Exclusions:

3 We will not pay for the loss or damage caused by or the resulting from any of the following 3a through 3c. But if an excluded Cause of Loss that is listed in 3a through 3c results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c Faulty, inadequate or defective:

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

of part or all of any property own on off the described premises.

#### SEVENTEENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

H Deductible:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance. The Deductible clause does not apply to Business Income.

**EIGHTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Deductible Amounts:

\$10,000 Tenant vandalism

**NINETEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Valuation:

Building: Replacement Cost – Agreed Amount; Contents: Replacement Cost, 90% Coinsurance

**TWENTIETH DEFENSE**

Insurance companies are the only defendant subjected to punitive damages under Alabama Law for breach of the implied duty of good faith which exists in every contract – thus creating a distinction that is under-inclusive and not rationally tailored to accomplish a legitimate state interest; wherefore, the imposition of punitive damages would violate the equal protection clause of the Fifth and Fourteenth Amendments of the United States Constitution and deprive RSUI of the right to equal protection under the law as provided in Article I, Section 1, 6 and 22 of the Alabama Constitution of 1901

**TWENTY-FIRST DEFENSE**

The imposition of punitive damages against an insurance company for asserting non-frivolous legal defenses to an insurance claim violates the, "right of access to the Courts," and the, "right to seek assistance of counsel," as guaranteed by the First and Fourteenth Amendments

to the United States Constitution and Article I, Sections 1, 6, and 22 of the Alabama Constitution of 1901

**TWENTY-SECOND DEFENSE**

Plaintiffs have asserted tort claims that allow for the imposition of punitive damages in certain cases. The imposition of punitive damages in this case would violate the due process clause of Amendments V and XIV to the United States Constitution and Article I, Section 6 of the Alabama Constitution of 1901 because the imposition of punitive damages would violate this defendant's right to substantive due process.

**TWENTY-THIRD DEFENSE**

The imposition of punitive damages under Alabama law would violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and Articles 1, 6 and 22 of the Alabama Constitution, in each of the following ways:

- (a) Alabama law permits the imposition of unlimited punitive damages that are vastly disproportionate to any actual or compensatory injury, thereby violating the 14th Amendment of the U S Constitution
- (b) Disproportionate punitive damages constitute an arbitrary and capricious taking of property that is unjustified by any rational governmental interest, thereby violating the 5th and 14th Amendments of the U.S Constitution
- (c) The award of any punitive damages without specific standards to guide the jury's discretion in determining the amount of damages is contrary to due process under the 14th Amendment of the U S Constitution
- (d) Alabama does not provide a reasonable limit on the amount of any punitive damages award, thus violating the 14th Amendment of the U S Constitution
- (e) The substantive standards of liability under which punitive damages are sought in this case are ambiguous, subjective, and not reasonably ascertainable, and are thus "void for vagueness" under the 14th Amendment of the U S Constitution

- (f) Alabama fails to provide a clear, objective and consistent appellate standard for post-verdict review of punitive damages thus violating the 5th and 14th Amendments of the United States Constitution
- (g) Alabama law permits civil punishment upon a standard of proof less than that required for the imposition of criminal sanctions
- (h) Alabama law permits joint and several punishment of defendants who are guilty of different acts and degrees of culpability
- (i) Alabama law permits multiple awards of punitive damages for the same alleged act or omission

#### **TWENTY-FOURTH DEFENSE**

Alabama's punitive damages law violates the Fifth Amendment guarantee against self-incrimination under the U.S. Constitution because said claim is penal in nature, while defendant is required to disclose documents and/or other evidence against its interest under the rules of discovery and evidence

#### **TWENTY-FIFTH DEFENSE**

The award of any damages under the allegations of this complaint would violate the prohibition against laws that impair the obligations of contracts in violation of the Contract Clause, Article I Sec 10 cl 1, of the United States Constitution and Article 1, Section 22, of the Constitution of Alabama, in that the claims are in derogation express terms contained in the insurance policy made basis of this action and contractually agreed upon by defendant and the named insured

#### **TWENTY-SIXTH DEFENSE**

Pursuant to ALA. CODE § 6-11-21, there is a cap on the amount of punitive damages recoverable in this action

**TWENTY-SEVENTH DEFENSE**

Pursuant to ALA CODE § 6-11-21, RSUI is not liable for any portion of any award of punitive damages wherein there have been no express findings that RSUI engaged in conduct as defined in ALA CODE § 6-11-20. RSUI is not jointly and severally liable to Plaintiffs for any award of punitive damages based upon the conduct of any other defendant.

**TWENTY-EIGHTH DEFENSE**

The imposition of punitive damages against RSUI in an amount exceeding any actual and potential harm by an excessive and/or unconstitutional ratio violates RSUI's due process rights as guaranteed by the United States Constitution.

**TWENTY-NINTH DEFENSE**

The imposition of punitive damages under Alabama's current system fails to provide fair notice to RSUI that the alleged wrongful conduct could subject RSUI to punishment and also fails to provide fair notice of the severity of the punishment that the State could impose through an award of punitive damages. This lack of fair notice violates RSUI's due process rights, both procedural and substantive, as guaranteed by the United States Constitution.

**THIRTIETH DEFENSE**

The imposition of punitive damages against RSUI in this case, if any, violates RSUI's due process rights as guaranteed by the United States Constitution because the award of punitive damages is excessive in light of the following criteria: (1) the degree of reprehensibility of the RSUI's alleged wrongful conduct; (2) the disparity between the harm or potential harm and the punitive damage award; and (3) the difference between the punitive damage award and the civil penalties authorized or imposed in other cases.

**THIRTY-FIRST DEFENSE**

The procedure for determining punitive damages specified under Alabama law violates RSUI's right to due process, and otherwise violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, because the procedure for determining punitive damages under Alabama law does not provide meaningful guidance to a jury in the determination of an appropriate punitive damages award and does not constrain a jury or otherwise reduce the risk of an arbitrary or grossly excessive punitive damages verdict

**THIRTY-SECOND DEFENSE**

Any award of punitive damages in this case would violate the Eighth Amendment to the U S Constitution as an excessive fine. Also, any award of punitive damages in this case would violate Article I, § 15 of the Alabama Constitution as an excessive fine

**THIRTY-THIRD DEFENSE**

The imposition of punitive damages violates the Fourth, Fifth and Fourteenth Amendments to the U S Constitution, as well as Article I, §§ 6 and 15 of the Constitution of Alabama by failing to provide clear, distinct, and adequate guidelines as to each of the following: (a) the general standards applicable to such an award; (b) the appropriate and specific standards and/or burdens of proof for such an award; (c) the amount of a punitive award; (d) the appropriate procedures for a punitive award; (e) the appellate standard of review of an award of punitive damages; (f) trifurcation of the proceedings with respect to whether compensatory liability and damages should be imposed, whether punitive damages should be imposed, and what amount of punitive damages should be imposed in order to prevent the inappropriate admission of evidence regarding punitive damages

**THIRTY-FOURTH DEFENSE**

RSUI contends that the limits on punitive damages imposed by ALA CODE § 6-11-21 should apply as a matter of rule and established public policy without alteration or amendment by the Court and that § 6-11-21 is constitutional. RSUI further contends that the principle of deference to the legislature's will should prevail with respect to the limits imposed on punitive damages awards and that any holding that does not so defer violates the separation of powers clauses of the Constitution of the United States and the Constitution of the State of Alabama.

**THIRTY-FIFTH DEFENSE**

Plaintiffs have failed to state a claim for which relief can be granted.

**THIRTY-SIXTH DEFENSE**


All allegations contained in Plaintiffs' First Amended Complaint that are not specifically admitted are denied.

**THIRTY-SEVENTH DEFENSE**

Plaintiff is not entitled to recovery to the extent that any damages were caused by Plaintiff's failure to mitigate damages.

**THIRTY-EIGHTH DEFENSE**

RSUI reserves the right to amend its answer and assert such additional defenses as may be available upon the development of facts in the discovery process or otherwise in the course of this litigation and under applicable substantive law.

  
HELEN JOHNSON ALFORD (ALF002)  
JUAN C. ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

N I Cervera, Esq  
Matthew Baker, Esq.  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

James S Lloyd, Esq  
Karen D Farley, Esq  
LLOYD, GRAY & WHITEHEAD, P C  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Done this 4<sup>th</sup> day of JANUARY, 2007

  
COUNSEL



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: JUAN ORTEGA  
jco@alfordclausen.com

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

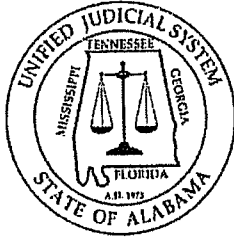
The following matter was FILED on 1/12/2007 1:36:33 PM

D005 RSUI GROUP, INC  
NOTICE OF CONSTITUTIONAL CHALLENGE  
[Attorney: ORTEGA JUAN C]

Notice Date: 1/12/2007 1:36:33 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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Judge: ROBERT W BARR

To: BURGESS TOM  
tburgess@burgesshale.com

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Judge: ROBERT W BARR

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ncervera@troycable.net

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55-CV-2006-000246.00

Judge: ROBERT W BARR

To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

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## AlaFile E-Notice

55-CV-2006-000246.00

Judge: ROBERT W BARR

To: LLOYD JAMES S  
jlloyd@lgwpc.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

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jco@alfordclausen.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
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[Attorney: ORTEGA JUAN C]

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PIKE COUNTY, ALABAMA  
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TROY, AL 36340

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES and METRA  
HUGHES, d/b/a HISTORICAL  
RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC., et al.,

Defendants.

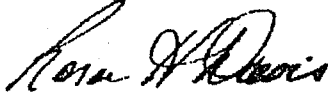
CASE NO. CV-2006-246-RWB

ACCEPTANCE AND WAIVER

TROY KING, Attorney General of the State of Alabama, acknowledges service of the Notice of Constitutional Challenge in the above-styled cause pursuant to §6-6-227 Code of Alabama, 1975 (Attached). The Attorney General, having filed this Acceptance and Waiver in this action, hereby waives any further service upon him of any pleadings, discovery and other matters filed in this cause and presently waives the right to be heard.

Respectfully submitted,

TROY KING, KIN047  
ATTORNEY GENERAL



ROSA H. DAVIS, DAV043  
ASSISTANT ATTORNEY GENERAL



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 19<sup>th</sup> day of January, 2007, served a copy of the foregoing  
by first-class United States Mail, postage prepaid and addressed upon the following:

Helen Johnson Alford, Esquire  
Juan C. Ortega, Esquire  
Alford, Clausen & McDonald, L.L.C.  
One St. Louis Centre, Suite 5000  
Mobile, Alabama 36602

N.J. Cervera, Esquire  
Matthew Baker, Esquire  
Cervera, Ralph & Reeves, L.L.C.  
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Troy, Alabama 36081

James S. Lloyd, Esquire  
Karen D. Farley, Esquire  
Lloyd, Gray & Whitehead, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223

Tom Burgess, Esquire  
Burgess & Hale, L.L.C.  
505 North 20<sup>th</sup> Street, Suite 300  
Birmingham, Alabama 35203



ROSA H. DAVIS, DAV043  
ASSISTANT ATTORNEY GENERAL

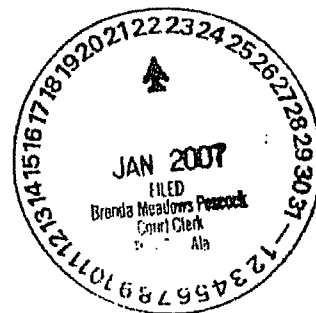
**ADDRESS OF COUNSEL:**

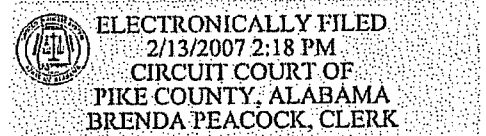
Office of the Attorney General  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130-0152  
334-242-7300  
334-353-8235 (Fax)



**§6-6-227. Persons to be made parties; rights of persons not parties.**

All persons shall be made parties, who have, or claim, any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party and shall be entitled to be heard; and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard. (Act 1935, No 355, p. 777; Code 1940, T.7, § 166 )





IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )  
Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )  
Defendants. )

NOTICE OF SERVICE OF DISCOVERY

TO: Clerk of Court, Pike County Circuit Court

Please take notice that Defendants, GAB Robins North America, Inc. and Troy Rhoades have served upon counsel of record, the following:

- (X) Defendant GAB Robins North America, Inc.'s Interrogatories to the Plaintiff, Donnie Hughes
- (X) Defendant GAB Robins North America, Inc.'s Interrogatories to the Plaintiff, Metra Hughes
- (X) Defendant GAB Robins North America, Inc.'s Request for Production of Documents to Plaintiff, Donnie Hughes

Dated: February 13, 2007

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223  
Telephone: 205-967-8822  
Facsimile: 205-967-2380  
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties by electronic transmission using the AlaFile Court filing system and by placing a copy of same in the United States Mail, properly addressed and correct postage affixed, this the 13<sup>th</sup> day of February, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

Telephone: 334-566-0116

Facsimile: 334-566-4073

*(Counsel for DONNIE AND METRA HUGHES d/b/a HISTORICAL RENTALS, INC.)*

J. Thomas Burgess, Jr., Esq.  
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Facsimile: (205) 715-4454

*(Counsel for HILB, ROGAL & HOBBS WHOLESALE INSURANCE SERVICES, INC. and KIRKLIN & COMPANY, LLC)*

Juan C. Ortega, Esq.  
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Telephone: (251) 432-1600

Facsimile: (251) 432-1700

*(Counsel for RSUI GROUP, INC.)*

/s/Karen D. Farley

Of Counsel



## AlaFile E-Notice

55-CV-2006-000246.00

To: KAREN FARLEY  
kfarley@lgwpc.com

---

## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

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CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

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To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
55-CV-2006-000246.00

The following discovery was FILED on 2/13/2007 2:18:54 PM

Notice Date: 2/13/2007 2:18:54 PM

BRENDA PEACOCK  
CIRCUIT COURT CLERK  
PIKE COUNTY, ALABAMA  
120 WEST CHURCH STREET  
TROY, AL 36340

334-566-4622  
brenda.peacock@alacourt.gov



## AlaFile E-Notice

55-CV-2006-000246.00

To: BURGESS TOM  
tburgess@burgesshale.com

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To: CERVERA N J  
ncervera@troycable.net

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To: FARLEY KAREN DIANNE  
kfarley@lgwpc.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

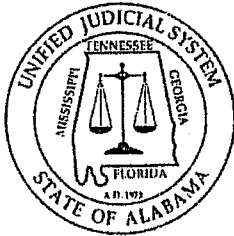
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jlloyd@lgwpc.com

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To: ORTEGA JUAN C  
jco@alfordclausen.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

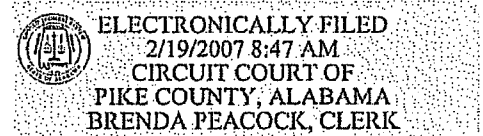
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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )  
Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )  
Defendants. )

NOTICE OF SERVICE OF DISCOVERY

TO: Clerk of Court, Pike County Circuit Court

Please take notice that Defendants, GAB Robins North America, Inc. and Troy Rhoades have served upon counsel of record, the following:

- (X) Defendant GAB Robins North America, Inc.'s Request for Production of Documents to Plaintiff, Metra Hughes

Dated: February 19, 2007

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223  
Telephone: 205-967-8822  
Facsimile: 205-967-2380  
Email: [jlloyd@gwpc.com](mailto:jlloyd@gwpc.com)  
[kfarley@gwpc.com](mailto:kfarley@gwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties by electronic transmission using the AlaFile Court filing system and by placing a copy of same in the United States Mail, properly addressed and correct postage affixed, this the 19<sup>th</sup> day of February, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325

Troy, Alabama 36081

Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)

[ncervera@troycable.net](mailto:ncervera@troycable.net)

Telephone: 334-566-0116

Facsimile: 334-566-4073

*(Counsel for DONNIE AND METRA HUGHES d/b/a HISTORICAL RENTALS, INC.)*

J. Thomas Burgess, Jr., Esq.  
Burgess & Hale, LLC  
Financial Center  
505 20th St N Ste 300  
Birmingham, Alabama 35203-4629  
Email: [tburgess@burgesshale.com](mailto:tburgess@burgesshale.com)

Telephone: (205) 715-4466

Facsimile: (205) 715-4454

*(Counsel for HILB, ROGAL & HOBBS WHOLESALE INSURANCE SERVICES, INC. and KIRKLIN & COMPANY, LLC)*

Juan C. Ortega, Esq.  
Alford, Clausen & McDonald, LLC  
1 Saint Louis St Ste 5000  
Mobile, Alabama 36602-3929  
Email: [jco@alfordclausen.com](mailto:jco@alfordclausen.com)

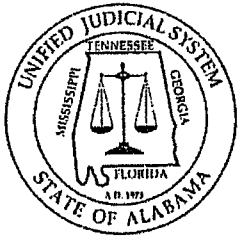
Telephone: (251) 432-1600

Facsimile: (251) 432-1700

*(Counsel for RSUI GROUP, INC.)*

/s/Karen D. Farley

Of Counsel



## AlaFile E-Notice

55-CV-2006-000246.00

To: KAREN FARLEY  
kfarley@lgwpc.com

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES, ETALS VS GAB ROBINS NORTH AMERICA, INC, ETAL  
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TROY, AL 36340

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brenda.peacock@alacourt.gov



## AlaFile E-Notice

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To: BAKER MATTHEW MICHAEL  
mbaker@troycable.net

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IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

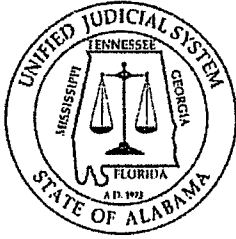
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334-566-4622  
brenda.peacock@alacourt.gov

# **EXHIBIT**

## **B**

Jan 25 07 12:26p

p. 2



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HISTORICAL RENTALS INC, a corporation organized under the laws of the State of Florida, filed on August 25, 1997, as shown by the records of this office

The document number of this corporation is P97000073391

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twenty-second day of October, 1997



CR2EO22 (2 95)

A handwritten signature in cursive script, reading "Sandra B. Williamson".

Sandra B. Williamson  
Secretary of State

Jan 25 07 12:26p

p. 3

FILED  
57 AUG 25 4 11 PM '04  
STATE  
SIGNATURE  
-01-  
CERTIFICATE OF INCORPORATIONHISTORICAL RENTALS, INC.

WE, THE UNDERSIGNED, hereby associate ourselves together for the purpose of becoming a corporation under the laws of the State of Florida, by and under the provisions of the Statutes of the said State of Florida.

ARTICLE I

The name of this corporation shall be:

HISTORICAL RENTALS, INC.

ARTICLE II

The corporation may engage in any activity or business permitted under the laws of the United States and of the State of Florida.

ARTICLE III

The maximum number of shares of capital stock that this corporation is authorized to have outstanding at any one time is FIVE HUNDRED (500) shares of common stock, having a par value of ONE (\$1.00) DOLLAR PER SHARE.

ARTICLE IV

The amount of capital with which this corporation will begin business shall be the sum of not less than FIVE HUNDRED (\$500.00) DOLLARS.

ARTICLE V

This corporation shall exist perpetually unless sooner dissolved according to law.

ARTICLE VI

The initial street address of the principal office of the corporation shall be:

1317 Harbor Point Road

Palmdale, Florida 33476

-1-  
(C)

Jan 25 07 12:29p

P. 4

ARTICLE VII

The number of Directors of this corporation shall be at least one (1) and no more than five (5).

ARTICLE VIII

The names and street addresses of the members of the first Board of Directors of this Corporation are as follows:

<u>Metra R. Hughes</u>	<u>Teddy L. Hughes</u>
<u>1897 Bacon Point Road</u>	<u>1897 Bacon Point Road</u>
<u>Pahokee, Florida 33476</u>	<u>Pahokee, Florida 33476</u>
_____	_____
_____	_____

ARTICLE IX

The names and street addresses of the persons signing these Articles of Incorporation as subscribers is as follows:

<u>Metra R. Hughes</u>	<u>1897 Bacon Point Road</u>
	<u>Pahokee, Florida 33476</u>
<u>Teddy L. Hughes</u>	<u>1897 Bacon Point Road</u>
	<u>Pahokee, Florida 33476</u>

ARTICLE X

The corporate existence of this corporation shall begin on the date the Articles of Incorporation are filed of record.

IN WITNESS WHEREOF, the undersigned, Metra R. Hughes AND Teddy L. Hughes both being natural persons, competent to contract, have hereunto set their hands and seals this 6th, day of August 1997.

X Metra R. Hughes (SEAL)  
X Teddy L. Hughes (SEAL)

STATE OF FLORIDA)

)SS

COUNTY OF Dade )

BEFORE ME, the undersigned Notary Public of the State of Florida personally appeared Metra R. Hughes and Teddy L. Hughes to me well known and known to me to be the individuals described in and who executed the foregoing Articles of Incorporation, and they acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal this 6th day of August 1997.

RECEIVED: NOTARY PUBLIC  
 My Comm. Expires: Nov 12, 1998  
 My Comm. No. 1028  
 My Comm. No. 1028  
 (Not a Notary Public)

Notary Public, State of Florida  
 My commission expires:

Jan 25 07 12:32p

P.5

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF PROCESS  
WITHIN FLORIDA, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED  
IN COMPLIANCE WITH SECTION 897.326 FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED:  
FIRST THAT HISTORICAL RENTALS, INC.  
(Name of Corporation)

WITH ITS PLACE OF BUSINESS AT 1097 Ocean Point Blvd Palm Beach Florida 33476  
(Business Address, City and State)

HAS NAMED Richard L. McInerney  
(Name of Registered Agent)

LOCATED AT 2911 East Main Street P.O. Box 617  
(Street Address and Number of Building,  
Post Office Box Addresses ARE NOT Acceptable)

CITY OF Palm Beach  
(City)

STATE OF FLORIDA, AS ITS AGENT TO ACCEPT SERVICE  
OF PROCESS WITHIN FLORIDA.

SIGNATURE X [Signature]  
(Corporate Officer) Richard L. McInerney  
TITLE President  
DATE 08-06-07

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION  
AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY  
AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE  
PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I ACCEPT THE DUTIES AND  
OBLIGATIONS OF SECTION 897.326 FLORIDA STATUTES.

SIGNATURE X [Signature]  
(REGISTERED AGENT) Richard L. McInerney  
DATE 08-06-07

BUREAU OF CORPORATE RECORDS, P.O. BOX 6127, TALLAHASSEE, FL 32314  
There is a filing fee of \$2.00 for this certificate)

Jan 25 07 12:34p

p-6

P97000073391

DATE August 6, 1997

SECRETARY OF STATE  
CORPORATION DIVISION  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA 32304

RE: Historical Rentals Inc. RXX  
(Name of Corporation)

GENTLEMEN:

ENCLOSED HERewith ARE THE ARTICLES OF INCORPORATION TOGETHER  
WITH A COPY OF SAID ARTICLES FOR Historical Rentals, Inc.  
(Name of Corporation)  
AND OUR CHECK IN THE AMOUNT OF 70.00 AS FOLLOWS:

Brought To:

Richard L. Hoffman, P.A.  
Certified Public Accountant  
P.O. Box 817  
2011 E. Main Street  
Pahokee, FL 33470

FILING FEE  
CHARTER TAX  
REGISTERED AGENT  
CERTIFIED COPY

115.00  
107.00  
10.00  
13.00

TOTAL

115.00  
212.30

RESPECTFULLY SUBMITTED:

*[Signature]*  
(Indy/H/ [Name])  
(Date/H/ [Date])

Historical Rentals, Inc.  
(Name of Corporation)

561-924 7557

(6)

561  
721,255.61, 255.8, 255.0  
117-1901

AUG 10 1997

Jan 25 07 12:36p

P. 7

**The Sunshine State**  
LICENSE NUMBER  
**H220-647-61-792-0**

**METRA G HUGHES**  
1712 ARABIAN DRIVE  
LOXAHATCHEE, FL 33470-0905

DATE OF BIRTH SEX HT. WT. EYES HAIR  
08-12-61 F 5-04

ISSUED 03-03-04 EXPIRES 03-12-10 DUPLICATE 00-00-00

*[Signature]*

OPERATION OF A MOTOR VEHICLE CONSTITUTES CONSENT TO ANY POLYGRAPH TEST REQUIRED BY LAW

SAFE DRIVER

**The Sunshine State**  
LICENSE NUMBER  
**H220-812-42-373-0**

**TEDDY LACON HUGHES**  
1712 ARABIAN DRIVE  
LOXAHATCHEE, FL 33470-0905

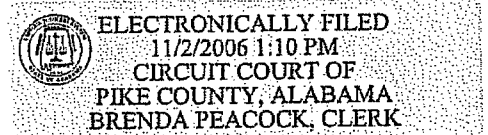
DATE OF BIRTH SEX HT. WT. EYES HAIR  
10-13-42 M 5-07 AB

ISSUED 07-27-00 EXPIRES 10-13-07 DUPLICATE 00-00-00

*[Signature]*

OPERATION OF A MOTOR VEHICLE CONSTITUTES CONSENT TO ANY POLYGRAPH TEST REQUIRED BY LAW

SAFE DRIVER



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs; )

v. )

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHODES, )

Defendants. )

Civil Action No.: CV-06-246

---

DEFENDANT GAB ROBINS NORTH AMERICA, INC.'S  
MOTION TO DISMISS

---

COMES NOW the Defendant, GAB Robins, North America, Inc., (Hereinafter referred to as "GAB Robins") pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant GAB Robins in the Plaintiffs' complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant GAB Robins shows unto the Court as follows:

1. On or about September 22, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed suit in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. and Troy Rhodes.
2. The Complaint sets forth various causes of action, including the following:
  - a. Breach of Contract;
  - b. Fraudulent Misrepresentation;
  - c. Fraudulent Suppression; and
  - d. Bad Faith.

3. Specifically, in the Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contact with Defendant, GAB Robins, by and through its alleged agent, Defendant Troy Rhodes. The Complaint alleges further that said agreement contained terms, by which Defendant GAB Robins, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Complaint alleges further that by the terms of said agreement, Defendant GAB Robins allegedly agreed to pay for damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins of the damage to said property.
5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiff that Defendant GAB Robins had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.
6. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Furthermore, GAB Robins provides services

for loss adjusting, appraisals and the third party administration of claims, but is not an insurer. (Exhibit A).

7. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression and bad faith against Defendant GAB Robins are due to be dismissed for failure to state a claim upon which relief can be granted. As GAB Robins does not underwrite insurance policies, it could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim or fraud in the making of an insurance contract against GAB Robins.

WHEREFORE, PREMISES CONSIDERED, Defendant GAB Robins North America, Inc. respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs against Defendant GAB Robins North America, Inc. pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 1<sup>st</sup> day of November, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc.

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North,

Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

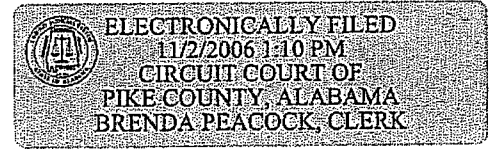
Facsimile: 205-967-2380  
Email: [jilloyd@lgwpc.com](mailto:jilloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System, by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 1<sup>st</sup> day of November, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

s/Karen D. Farley  
Of Counsel



## **EXHIBIT A**

---

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV06-246

---

AFFIDAVIT OF THOMAS SANTANGELO, ESQUIRE

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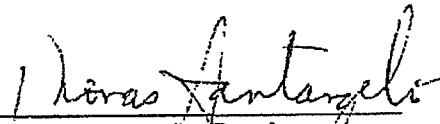
STATE OF NEW JERSEY)

COUNTY OF MORRIS)

Before me, the undersigned authority, a Notary Public in and for said County and in said State, personally appeared Thomas Santangelo, Deputy General Counsel for GAB Robins North America, Inc. and after first being duly sworn, testified as follows:

1. My name is Thomas Santangelo and I am over the age of nineteen (19) years.  
I am Deputy General Counsel for GAB Robins North America, Inc. and was so at all times relevant to the above-styled lawsuit.
2. GAB Robins North America, Inc.'s headquarters is located in Parsippany, New Jersey. GAB Robins North America, Inc. is not an insurance company or an insurer. It does not underwrite and issue insurance policies. GAB Robins North America, Inc. provides services for loss adjusting, appraisals and third party administration of claims, but is not an insurer.
3. I have personal knowledge of the foregoing.

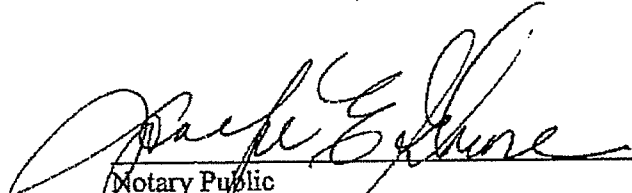
Further Affiant saith not.

  
Thomas Santangelo, Esquire

STATE OF NEW JERSEY  
COUNTY OF MORRIS

Sworn to and subscribed before me on this 15 day of November,  
2006.

(Seal)

  
Notary Public  
My commission expires:

JOCELYN E GILMORE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 2008

**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

CASE NO: CV-2006-246-RWB

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHOADES, )  
HILB, ROGAL & HOBBS )  
WHOLESALE INSURANCE SERVICES, )  
INC., KIRKLIN & CO., LLC, a/k/a )  
HRH/KIRKLIN & CO., LLC and )  
RSUI GROUP, INC. )

TRIAL BY JURY DEMANDED

Defendants. )

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

COMES NOW, the Plaintiffs in the above-styled matter, pursuant to Rule 15 (a) of the Alabama Rules of Civil Procedure, and do hereby amend their original complaint against GAB Robins North America, Inc., and Troy Rhoades to add Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin & Co., LLC a/k/a/ HRH/Kirklin & Co., LLC and RSUI Group, Inc. as parties to the action and also so that the complaint shall read as follows:

**STATEMENT OF THE PARTIES**

1. Historical Rentals, Inc., "Plaintiff", is an Alabama corporation incorporated and doing business in Pike County, Alabama.
2. GAB Robins North America, Inc., "Defendant GAB", is a corporation incorporated in Delaware, with an Alabama place of business in Montgomery and

also doing business in Pike County, Alabama through their agent, Troy Rhoades, an Alabama resident.

3. Troy Rhoades, "Defendant Rhodes", is an Alabama resident doing business in Pike County, Alabama.
4. Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc., Troy Rhodes, and Kirklin and Co., LLC.
5. Kirklin and Co., LLC. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc. and Troy Rhoades.
6. Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin and Co., LLC are also known as and do business as HRH/Kirklin & Co., LLC, hereinafter referred to as "Defendant HRH/Kirklin."
7. RSUI Group, Inc. is a corporation incorporated in Delaware doing business in Pike County, Alabama through GAB Robins North America, Inc., Troy Rhoades, Hilb, Rogal and Hobbs Wholesale Insurance Services, Inc. and Kirklin and Co., LLC.

#### COUNT 1

8. Plaintiffs adopt and reallege paragraphs 1 through 7 above as if fully set forth herein.
9. On or about the 1<sup>st</sup> day of April 2004, Plaintiff entered into a written agreement with Defendant HRH/Kirklin and Defendant RSUI through by the terms of which

Defendant HRH/Kirklin on the authorized behalf of Defendant RSUI agreed to insure Plaintiff's property that is rented or leased to others and intended for rental or lease to others for a term of one year.

10. In said agreement, Defendant RSUI agreed to pay for damage done to Plaintiff's property that is rented or leased to others and intended for rental or lease to others.
11. Further, in said agreement, Defendant GAB was named as the adjusting company for said policy with Defendant Rhoades as the named adjuster.
12. The Plaintiff's property was damaged on September 16, 2004 by Hurricane Ivan and incurred severe additional damage on September 23, 2004.
13. Shortly thereafter, Plaintiff promptly notified Defendant HRH/Kirklin and Defendant GAB of the damage to the property.
14. On or about the 6<sup>th</sup> day of January 2005, Defendant GAB on behalf of Defendant RSUI notified Plaintiff that they had no intention of paying for the cost of repair, thereby breaching said agreement by failing to cover the losses incurred by Plaintiff because of the damaged property.
15. As a proximate consequence to the Defendants' said breach, Plaintiff has not been able to repair the property and therefore unable to rent or lease the piece of property to any tenants. The cost of repair has been estimated at over \$400,000.00. Plaintiff is able to rent the piece of property at a rate of \$500.00 per day.

**WHEREFORE**, Plaintiff demands judgment against the Defendants in the sum of the estimated cost of repair plus the loss of income from not being able to rent or lease the property, interest and costs.

**COUNT 2**

16. Plaintiff adopts and realleges paragraphs 1 through 15 above as if fully set forth herein.
17. In the course of negotiating an agreement to insure Plaintiff, Defendant HRH/Kirklin represented to Plaintiff that Defendant would pay for the cost of

repairing damages done to Plaintiff's property that is rented or leased to others and intended for rental or lease to others.

18. The representations Defendant HRH/Kirklin made were false, and Defendants knew they were false when made. Neither Defendant HRH/Kirklin nor Defendant RSUI ever paid for the repair of the damaged property. Defendants made such representations with the intention that Plaintiff should rely upon them.
19. Plaintiff believed the representations and relied on them in the purchase of the insurance agreement. As a result, Plaintiff did not receive monies owed in order to repair the damaged property and lost and continues to lose money for not being able to rent or lease the damaged property.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.

### **COUNT 3**

20. Plaintiff adopts and realleges paragraphs 1 through 19 above as if fully set forth herein.
21. Plaintiff made a claim with Defendants GAB, RSUI and/or HRH/Kirklin on said policy agreement, but Defendant GAB on or about January 5, 2005, on behalf of Defendant RSUI intentionally refused to pay Plaintiff's claim and denied the same without proper justification.
22. Defendant GAB's refusal to pay said claim was not based on any reasonably legitimate, arguable or debatable reason for denying the Plaintiff's claim, or, in the alternative, Defendant GAB intentionally failed to determine whether there was a lawful basis for its refusal to pay said claim.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.

**COUNT 4**

23. Plaintiff adopts and realleges paragraphs 1 through 22 above as if fully set forth herein.
24. Shortly after the 23<sup>rd</sup> day of September, 2004 the Plaintiffs reported the damage to their property to Defendants GAB, RSUI and/or HRH/Kirklin in accordance with the insurance agreement.
25. Under the terms of the insurance agreement, Defendants GAB by and through Defendant Rhoades was to act as the adjuster of the property, thus a fiduciary duty existed between Defendants GAB and its agent Defendant Rhoades to the Plaintiffs.
26. Defendant GAB, through Defendant Rhoades did not ever properly adjust these claims, thereby breaching said fiduciary duty.
27. As a result of Defendant GAB's and Defendant Rhoades' said breach, Defendants HRH/Kirklin and RSUI did not ever pay these claims thus causing plaintiff to lose money by not being able to rent or lease the property.

**COUNT 5**

28. Plaintiff adopts and realleges paragraphs 1 through 27 above as if fully set forth
29. Shortly after the 23<sup>rd</sup> day of September, 2004 the Plaintiffs reported the damage to their property to Defendants GAB, RSUI and/or HRH/Kirklin in accordance with the insurance agreement.
30. Under the terms of the insurance agreement, Defendants HRH/Kirklin and/or RSUI agreed to pay for covered loss or damage within a reasonable time of receiving the sworn proof of loss from plaintiff.
31. Defendants HRH/Kirklin and RSUI did not ever pay these claims.
32. Defendants HRH/Kirklin and RSUI did not ever pay these claims in the time period that the Defendants and plaintiffs agreed upon thus causing the plaintiffs to

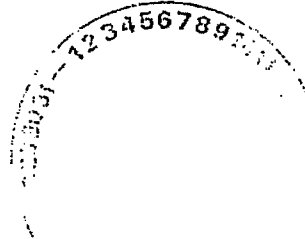
lose money by not being able to rent or lease the property.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount a jury deems appropriate.



N.J. Cervera (CER001)  
Matthew Baker (BAK017)  
Attorneys for the Plaintiff

OF COUNSEL:  
**CERVERA, RALPH & REEVES, LLC**  
914 South Brundidge Street  
Troy, Alabama 36081  
(334) 566-0116



**JURY DEMAND**

Plaintiff demands a trial by jury on all issues of the cause.




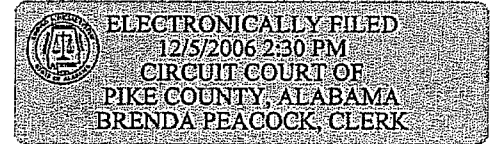
Of Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served on this the  
6<sup>th</sup> day of November, 2006 upon:

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Lloyd, Gray & Whitehead, P.C.  
2501 Twentieth Place North  
Suite 300  
Birmingham, Alabama 35223

  
OF COUNSEL



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV-06-246

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DEFENDANT GAB ROBINS NORTH AMERICA, INC.'S  
SECOND MOTION TO DISMISS

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COMES NOW the Defendant, GAB Robins, North America, Inc., (hereinafter referred to as "GAB Robins") pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant GAB Robins in the Plaintiffs' First Amended Complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant GAB Robins shows unto the Court as follows:

1. On or about November 6, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed their First Amended Complaint in the above-styled matter in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. and Troy Rhodes. Plaintiff's added as party Defendants, Hilbe, Rogal & Hobbs Wholesale Insurance Services, Inc.; Kirklin & Co., LLC a/k/a HRH/Kirklin & Co., LLC and RSUI Group, Inc.
2. The Plaintiffs' First Amended Complaint sets forth various causes of action, including the following:

- a. Breach of Contract;
  - b. Fraudulent Misrepresentation;
  - c. Fraudulent Suppression;
  - d. Bad Faith;
  - e. Breach of Fiduciary Duty; and
  - f. Negligence in the adjustment of an insurance claim.
3. Specifically, in the Plaintiffs' First Amended Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contract with Defendant, HRH/Kirklin & Co., LLC and RSUI Group, Inc. and that in said agreement, Defendant GAB Robins, by and through its alleged agent, Defendant Troy Rhodes was named as the adjusting company. The Plaintiffs' First Amended Complaint alleges further that said agreement contained terms, by which Defendants, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Plaintiffs' First Amended Complaint alleges further that by the terms of said agreement, Defendant GAB Robins was allegedly contacted to evaluate damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins of the damage to said property.

5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiffs that Defendant GAB Robins, on behalf of Defendant RSUI, had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.
6. Plaintiffs allege further that Defendant GAB Robins and Defendant Troy Rhodes breached a fiduciary duty owed to the Plaintiffs in the adjustment of the Plaintiffs property damage claim.
7. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Furthermore, GAB Robins provides services for loss adjusting, appraisals and the third party administration of claims, but is not an insurer. (Exhibit A).
8. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression, breach of fiduciary duty and bad faith against Defendant GAB Robins are due to be dismissed for failure to state a claim upon which relief can be granted. As GAB Robins does not underwrite insurance policies, it could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim, breach of fiduciary duty or fraud in the making of an insurance contract against GAB

Robins. Any duty owed by GAB Robins in the adjustment of the claim was owed to Defendants RSUI Group, Inc. and Defendant HRH/Kirklin & Co., LLC.

WHEREFORE, PREMISES CONSIDERED, Defendant GAB Robins North America, Inc. respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs First Amended Complaint against Defendant GAB Robins North America, Inc. pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 5th day of November, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc.

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North,  
Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

Facsimile: 205-967-2380

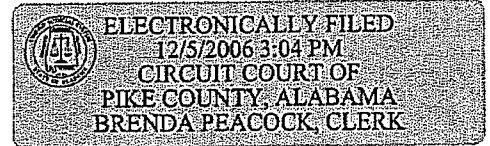
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System, by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 5th day of November, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

*s/Karen D. Farley*  
Of Counsel



**IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA**

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

**CASE NO: CV-2006-246-RWB**

GAB ROBINS NORTH AMERICA, )  
INC. and TROY RHOADES, )  
HILB, ROGAL & HOBBS )  
WHOLESALE INSURANCE SERVICES, )  
INC., KIRKLIN & CO., LLC, a/k/a )  
HRH/KIRKLIN & CO., LLC and )  
RSUI GROUP, INC. )

**TRIAL BY JURY DEMANDED**

Defendants. )

**PLAINTIFFS' RESPONSE TO DEFENDANT**  
**GAB ROBINS NORTH AMERICA, INC'S MOTION TO DISMISS**

COME NOW, the Plaintiffs in the above-styled matter, and in response to Defendant GAB Robins North America, Inc.'s Motion to Dismiss, hereinafter referred to as Defendant GAB, does hereby state the following:

1. That on or about January 5, 2005 and January 25, 2005, Defendant GAB explicitly rejected insurance claims made by the Plaintiffs regarding damage to their property as evidenced by the two letters attached as Exhibits A and B.
2. Additionally, on or about February 8, 2005, Defendant GAB attempted to resolve a claim with a payment made by check, a copy of which is attached hereto as Exhibit C.
3. Said payment was made by Defendant GAB by one of Defendant GAB's

company checks.

4. Exhibits A, B and C would show that Defendant GAB was the entity that was responsible for handling, investigating, rejecting and/or paying claims made by the Plaintiffs regarding the property in Pike County.
5. The letters further evidence the fact that Defendant GAB was the entity which was indeed contacted, that they conducted an investigation and that they subsequently rejected the Plaintiff's claims.
6. Both letters (Exhibits A and B) are written on Defendant GAB's letterhead and signed by one Bruce Clapp, who identifies himself as a branch manager who is employed by Defendant GAB and is writing on behalf of RSUI Indemnity Company, a named defendant in the amended complaint.
7. In the letterhead of Exhibits A and B, Bruce Clapp's email address is listed as clappb@gabrobins.com, another indication of his employment with Defendant GAB and Defendant GAB's involvement.
8. All evidence points to Defendant GAB as the primary entity who handled Plaintiff's claims from start to finish and their involvement in Plaintiff's claims cannot be disputed.
9. As evidenced by Plaintiff's Exhibits A, B, and C, Defendant GAB was involved in Plaintiff's allegations of fraudulent misrepresentation, fraudulent suppression, breach of contract, and bad faith refusal to pay claims.
10. Additionally, Plaintiff has since amended the original complaint to include other entities involved in the fraudulent misrepresentation, fraudulent

suppression, breach of contract, and bad faith refusal to pay Plaintiff's claims and said amended complaint more specifically allege Defendant GAB's involvement and wrongdoings.

**WHEREFORE**, it is respectfully requested that this Court deny Defendant GAB's motion to dismiss and require them to answer the complaint in a timely manner.

Respectfully submitted, this the 5<sup>th</sup> day of December, 2006.

s/ Matthew Baker  
N. J. Cervera (CER001)  
Matthew Baker (BAK017)  
Attorneys for the Plaintiffs

OF COUNSEL:  
**CERVERA, RALPH & REEVES, LLC**  
914 South Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
(334) 566-0116 phone  
(334) 566-4073 facsimile

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been electronically delivered and put in the United States mail on this the 5<sup>th</sup> day of December, 2006 upon:

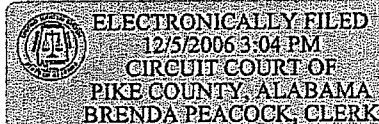
James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Lloyd, Gray & Whitehead, P.C.  
2501 Twentieth Place North  
Suite 300  
Birmingham, Alabama 35223

s/ Matthew Baker  
OF COUNSEL



GAB Robins North America, Inc.

(A)



T: 317-815-3400  
F: 317-815-3410  
E mail: clappb@gabrobins.com

January 6, 2005

**Reservation of Rights**  
**Certified Mail Return Receipt Request & US Regular Mail**

Gamma Gamma Chapter of PKPhi  
C/O Historical Rentals, Inc.  
P.O. Box 215  
Pahhokee, FL 33476

Attn: Donny Hughes

Our Insured: Gamma Gamma Chapter of PKPhi  
Claim Number: 55820-37670  
Policy Number: NHD332474  
Date of Loss: 9/16/04

We have received notice of a claim being made under the above referenced policy of insurance. Specifically, claim made for hurricane damage as a result of Hurricane Ivan. Indications were made that interior damage may have also occurred as a result.

Gamma Gamma Chapter of PKPhi was issued a policy of insurance policy number NHD332474, by RSUI Indemnity Company for the policy period of 4/1/2004 to 4/1/2005. You are now seeking benefits under the above referenced policy of insurance.

First, we respectfully wish to call your attention to sections of this policy as they relate to your duties after a loss occurs, and other insurance clauses:

Form SB 86 01 (11/97) States on page 2-3 under Loss Conditions:

"C. Duties In the Event of Loss or Damage

- (1) You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken
- b. Give us prompt notice of the loss or damage. Include a description of the property involved
- c. As soon as possible, give us a description of how, when, and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered property from such loss, for consideration in the settlement of the claim. However, we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a covered Cause of Loss. This will not increase the Limit of Insurance.

55820-37670

Page 2

- e. Also, if feasible, set damaged property aside and in the best possible order, for examination.
- f. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- g. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- h. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- i. Cooperate with us in the investigation or settlement of the claim."

Form SB 86 01 (11/97) States on page 4 under Loss Conditions:

" F. Other Insurance

- (1) You may have other insurance subject to the same plan, terms, conditions And provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
- (2) If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage."

Secondly, we respectfully wish to call your attention to other areas of concern relative to our handling of this matter:

Form SB 86 01 (11/97) States on page 5 under Loss Conditions:

" J. Vacancy...

(3) Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:  
... (4) water damage;"

Form SB 86 02 (04/99) States on page 4 under Exclusions:

"2. We will not pay for loss or damage caused by or resulting from any of the following:

...d.

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality in property that causes it to damage or destroy itself;"

The issues mentioned above refer to both general duties after a loss and concerns expressed specifically for this claim as they relate to potential vacancy of the property prior to this loss and as they relate to the general conditions of the property prior to the loss limiting our ability to pay for loss due to wear and tear as well as general deterioration of the property.

55820-37670

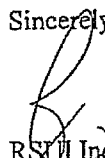
Page 3

The fact of this claim are too vague to determine at this time whether or not the claims being asserted will be covered by the provisions of the policy. Your interests and the Company's interests may be better served and protected by an investigation of the facts concerning the questions of coverage and your potential liability. Therefore, RSUI Indemnity Company will proceed to investigate this matter under a full and complete reservation of all our rights and defenses. This reservation of rights extends to all facts, known and unknown, as they may pertain to this claim.

Any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance. The Company further reserves the right to deny coverage and withdraw from any further participation in this matter altogether, should facts be developed that determine the above captioned policy does not cover this loss.

By naming the specific grounds for the possibility of no coverage or benefits, we do not waive any of our rights or any of the other provisions of the policy of insurance and specifically reserve all of our rights and remedies under this policy and under the statutes and common law.

Sincerely,

  
RSUI Indemnity Company by  
Bruce G. Clapp, AIC  
Indiana ICS Branch Manager  
GAB Robins N.A., Inc.

cc: Mr. Dan Durbin, RSUI Indemnity Company  
Mr. Mark Schwartz, RSUI Indemnity Company  
Mr. Richard Jungman, Hobbs group / Kirklin & Co., LLC



GAB Robins North America, Inc.

(B)

450 E. 96<sup>th</sup> Street, Suite 320  
Indianapolis, IN 46240  
T: 317-815-3400  
F: 317-815-3410  
E mail: clappb@gabrobins.com

January 25, 2005

Gamma Gamma Chapter of PKPhi  
C/O Historical Rentals, Inc.  
P.O. Box 215  
Pahhokee, FL 33476

Attn: Donny Hughes

Our Insured: Gamma Gamma Chapter of PKPhi  
Claim Number: 55820-37669  
Policy Number: NHD332474  
Date of Loss: 9/23/04

This acknowledges our investigation of the above captioned claim. Specifically, claim made for vandalism from members of the local fraternity. Gamma Gamma Chapter of PKPhi was issued a policy of insurance policy number NHD332474, by RSUI Indemnity Company for the policy period of 4/1/2004 to 4/1/2005. You are now seeking benefits under the above referenced policy of insurance. Consequently, we have completed our investigation into this matter.

Our field adjuster prepared an estimate of what *may* be construed as *vandalism* by person(s) unknown. You have alleged that the fraternity members, as tenants of this house are responsible for this damage. I should point out to you, the specific definition for vandalism as it relates to your claim.

Adjustment of Property Losses. Thomas/Reed, 1977, on page 116 discusses the peril of vandalism and describes that as "...willful destruction of works of art & beauty..." as well as "willful and malicious injury to or destruction of the property of others with malicious intent." Based upon this accepted definition, accidental damage nor wear and tear, whether normal or excessive, would be considered vandalism and recoverable under this policy. Our adjuster prepared an estimate for what may be construed as possible vandalism but it is, at replacement cost, well under the \$ 10,000 deductible for this peril.

You have expressed concerns as well with electrical wiring done by the tenant. Your policy form SB8602 (Ed. 04/99) provides on page 5, under Section C. Exclusions:

- "3. We will not pay for loss or damage caused by or resulting from any of the following:
- ...c Faulty, inadequate or defective:
  - (2). design, specifications, workmanship, repair, construction, renovation,

remodeling, grading, compaction: ... of part or all of any property on or off the described premises."

It is the therefore the position of RSUI Indemnity Company that there will be no payment forthcoming on this claim to Gamma Gamma Chapter of PKPhi C/O Historical Rentals, Inc under the above mentioned policy of insurance. Therefore, we must respectfully contend that Gamma Gamma Chapter of PKPhi C/O Historical Rentals, Inc is not entitled to benefits under the above referenced policy of insurance.

Our decision has been based on all facts presently available to us. If you have additional knowledge or facts relevant to this matter, please notify us in writing immediately so that we can evaluate the additional information and/or new allegations for potential coverage under the above policy. Please note that any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance

Any action taken by us in the investigation, defense, or settlement of this claim shall not constitute or be construed as a waiver or an estoppel of any rights or defenses we have under the subject policy of insurance. The Company further reserves the right to deny coverage and withdraw from any further participation in this matter altogether, should facts be developed that determine the above captioned policy does not cover this loss

By naming the specific grounds for the possibility of no coverage or benefits, we do not waive any of our rights or any of the other provisions of the policy of insurance and specifically reserve all of our rights and remedies under this policy and under the statutes and common law.

Sincerely,

RSUI Indemnity Company by  
Bruce G. Clapp, AIC  
Indiana ICS Branch Manager  
GAB Robins N.A., Inc.

cc: Mr. Dan Durbin, RSUI Indemnity Company  
Mr. Mark Schwartz, RSUI Indemnity Company  
Mr. Richard Jungman, Hobbs group / Kirklin & Co., LLC

(c)

CLAIM INFORMATION	
CLAIMANT NAME: GAMMA GAMMA CHAPTER OF PK	
OCCURRENCE DATE: 09/16/04	PHONE: 317-815-3400
GAB FILE NUMBER: 55820-37670	FAX: 317-815-3410
INSURANCE COMPANY:	
POLICY NUMBER:	
INSURED NAME: GETTYSBURG NATIONAL INDEMNITY (SAC)	DATE: 02/08/05
CLAIM NUMBER: N/A	

CONTACT GAB IF YOU HAVE ANY QUESTIONS CONCERNING THIS CHECK

PAYMENT INFORMATION	
PAYMENT FOR:	
INVOICE NUMBER:	
CHECK NUMBER: 5135588	
CHECK AMOUNT: \$3,105.61	

THE FACE OF THIS DOCUMENT HAS A MULTICOLOR BACKGROUND - HOLD TO LIGHT TO VIEW

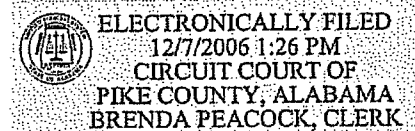
**GAB Robins**  
GAB Robins North America, Inc.  
INDIANAPOLIS, IN 46240-3754  
450 EAST 90TH STREET  
INDIANAPOLIS, IN 46240-3754  
GAB Robins North America, Inc.  
ATTENTION OF: GETTYSBURG NATIONAL INDEMNITY (SAC)

Three thousand one hundred five and 01/100 Dollars  
PAY TO THE ORDER OF  
GAMMA GAMMA CHAPTER OF PK  
HISTORICAL RENTALS, INC.

CITIBANK DELAWARE  
ONE PENNS WY, NEW CASTLE, DE 19720

CHECK NO. 5135588  
CHECK DATE 02/08/05  
GAB FILE NO. 55820-37670  
AMOUNT \$3,105.61  
VOID AFTER 60 DAYS

*Joseph M. Zych*



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV-06-246

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DEFENDANT TROY RHODES' MOTION TO DISMISS

---

COMES NOW the Defendant, Troy Rhodes, pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure and moves this Court for entry of an Order dismissing the claims against Defendant Troy Rhodes in the Plaintiffs' complaint on the grounds that the Plaintiffs have failed to state a claim upon which relief may be granted. In support thereof, Defendant Troy Rhodes shows unto the Court as follows:

1. On or about September 22, 2006, the Plaintiffs Donnie and Metra Hughes d/b/a Historical Rentals, Inc. filed suit in the Circuit Court of Pike County, Alabama against GAB Robins North America, Inc. (hereinafter referred to as "GAB Robins") and Troy Rhodes. Plaintiffs allege in their Complaint that at all times material thereto, Troy Rhodes was an agent or employee of Defendant GAB Robins North America, Inc. Defendant Troy Rhodes was served by certified mail on November 8, 2006.
2. The Complaint sets forth various causes of action, including the following:
  - a. Breach of Contract;

- b. Fraudulent Misrepresentation;
- c. Fraudulent Suppression; and
- d. Bad Faith.

3. Specifically, in the Complaint, the Plaintiffs, Donnie and Metra Hughes, allege that on or about April 1, 2004 the Plaintiffs entered into an insurance contract with Defendant, GAB Robins, by and through its alleged agent or employee, Defendant Troy Rhodes. The Complaint alleges further that said agreement contained terms, by which Defendant GAB Robins, allegedly agreed to insure Plaintiffs' property, which Plaintiffs intended for rental or lease for a term of one year. The Complaint alleges further that by the terms of said agreement, Defendant GAB Robins, by and through its agent or employee Troy Rhodes, allegedly agreed to pay for damage done to Plaintiffs' property that is to be used for rental or lease purposes.
4. Plaintiffs allege further that said property was damaged on September 16, 2004 by Hurricane Ivan and suffered additional damage on September 23, 2004. Plaintiffs allege further that they promptly notified Defendant GAB Robins, through its alleged agent Troy Rhodes of the damage to said property.
5. Plaintiffs also allege that on or about January 6, 2005 Defendant GAB Robins notified Plaintiff that Defendant GAB Robins had no intention of paying for the cost of repair, thereby allegedly breaching said agreement. Plaintiffs allege damages consisting of the cost of repairs for said property and loss of income from said property.

6. Defendant GAB Robins is not an insurance company nor does it provide insurance benefits to any individual or entity. (Exhibit A - Affidavit of Thomas Santangelo, Esquire). Additionally, Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of GAB Robins, North America, Inc. does not provide insurance benefits to any individual or entity. GAB Robins does not underwrite and issue insurance policies. (Exhibit A). Further, to the extent that Defendant Troy Rhodes is alleged to be an agent or employee of GAB Robins North America, Inc., he does not underwrite or issue insurance benefits on behalf of GAB Robins North America, Inc.
7. Pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure, Plaintiffs claims for breach of contract, fraudulent misrepresentation, fraudulent suppression and bad faith against Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc. are due to be dismissed for failure to state a claim upon which relief can be granted. As Defendant Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc., does not, in such a capacity underwrite insurance policies, Defendant Troy Rhodes could not have entered into an insurance contract with the Plaintiffs. Therefore, the Plaintiffs cannot maintain any cause of action for breach of an insurance contract, bad faith failure to pay on an insurance claim or fraud in the making of an insurance contract against Troy Rhodes, to the extent that he is alleged to be an agent or employee of Defendant GAB Robins North America, Inc.

WHEREFORE, PREMISES CONSIDERED, Defendant Troy Rhodes respectfully requests that this Honorable Court enter an Order dismissing all claims brought by the Plaintiffs against Defendant Troy Rhodes pursuant to Rule 12(b)(6) of the Alabama Rules of Civil Procedure.

Respectfully submitted this the 7th day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendant, GAB Robins  
North America, Inc. and Troy Rhodes

OF COUNSEL:

LLOYD, GRAY & WHITEHEAD, P.C.

2501 Twentieth Place North,  
Suite 300

Birmingham, Alabama 35223

Telephone: 205-967-8822

Facsimile: 205-967-2380

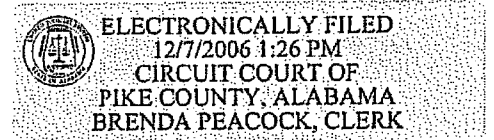
Email: [jlloyd@lgwpc.com](mailto:jlloyd@lgwpc.com)  
[kfarley@lgwpc.com](mailto:kfarley@lgwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 7th day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

s/Karen D. Farley  
Of Counsel



## **EXHIBIT A**

---

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES,  
d/b/a HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHODES,

Defendants.

Civil Action No.: CV06-246

---

AFFIDAVIT OF THOMAS SANTANGELO, ESQUIRE

---

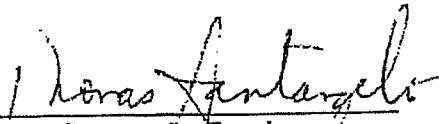
STATE OF NEW JERSEY)

COUNTY OF MORRIS)

Before me, the undersigned authority, a Notary Public in and for said County and in said State, personally appeared Thomas Santangelo, Deputy General Counsel for GAB Robins North America, Inc. and after first being duly sworn, testified as follows:

1. My name is Thomas Santangelo and I am over the age of nineteen (19) years. I am Deputy General Counsel for GAB Robins North America, Inc. and was so at all times relevant to the above-styled lawsuit.
2. GAB Robins North America, Inc.'s headquarters is located in Parsippany, New Jersey. GAB Robins North America, Inc. is not an insurance company or an insurer. It does not underwrite and issue insurance policies. GAB Robins North America, Inc. provides services for loss adjusting, appraisals and third party administration of claims, but is not an insurer.
3. I have personal knowledge of the foregoing.

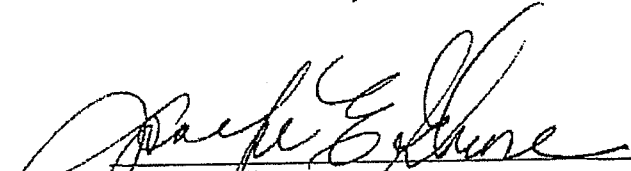
Further Affiant saith not.

  
Thomas Santangelo, Esquire

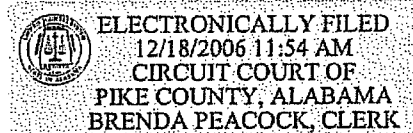
STATE OF NEW JERSEY  
COUNTY OF MORRIS

Sworn to and subscribed before me on this 1st day of November,  
2006.

(Seal)

  
Notary Public  
My commission expires:

JOCELYN E GILMORE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 2008



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )

Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )

Defendants. )

---

ANSWER OF DEFENDANT GAB ROBINS NORTH AMERICA, INC.

---

COMES NOW the Defendant, GAB Robins, North America, Inc., (hereinafter referred to as "GAB Robins") and for Answer to the Complaint and each count and paragraph thereof and Plaintiffs' First Amended Complaint and each count and paragraph thereof, sets down and assigns the following separate and several defenses, without waiving any substantive or procedural deficiencies in the Plaintiffs' Complaint or Amended Complaint:

**STATEMENT OF THE PARTIES**

1. Upon information and belief, GAB Robins admits the allegations of this paragraph.
2. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 2, therefore, the allegations are denied and Defendant demands strict proof thereof.

3. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.

**COUNT ONE**

4. The allegations of paragraph 4 are denied and Defendant demands strict proof thereof.
5. Defendant GAB Robins denies the allegations of paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.
6. Defendant GAB Robins denies the allegations of paragraph 6 of the Plaintiffs' Complaint and demands strict proof thereof.
7. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.
8. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 8, therefore, the allegations are denied and Defendant demands strict proof thereof.
9. Defendant GAB Robins denies the material allegations of paragraph 9 and demands strict proof thereof.
10. Defendant GAB Robins denies that as a proximate consequence of a breach of contract that the plaintiffs have not been able to repair property and therefore unable to rent or lease the aforescribed property and demands strict proof thereof. Defendant GAB Robins is without sufficient information to admit or deny the balance of the allegations set forth in paragraph 10 and, therefore, denies the same and demands strict proof thereof.

**COUNT TWO**

11. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
12. Defendant GAB Robins denies the material allegations of paragraph 12 and demands strict proof thereof.
13. Defendant GAB Robins denies the material allegations of paragraph 13 and demands strict proof thereof.
14. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 14 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

15. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
16. Defendant GAB Robins denies the material allegations of paragraph 16 and demands strict proof thereof.
17. Defendant GAB Robins denies the material allegations of paragraph 17 and demands strict proof thereof.

**COUNT FOUR**

18. Upon information and belief, GAB Robins denies the allegations of this paragraph and demands strict proof thereof.
19. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 19 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

20. Defendant GAB Robins denies the material allegations of paragraph 20 and demands strict proof thereof.
21. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 21 and, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant GAB Robins denies the material allegations of paragraph 22 and demands strict proof thereof.
23. Defendant GAB Robins denies the allegations of Plaintiffs' Complaint, contests damages and demands strict proof thereof of all claims.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 1 of the Plaintiffs' First Amended Complaint and, therefore the allegations are denied and Defendant demands strict proof thereof.
2. The allegations of paragraph 2 are admitted.
3. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 3, therefore, the allegations are denied and Defendant demands strict proof thereof.
4. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 4, therefore, the allegations are denied and Defendant demands strict proof thereof.
5. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 5, therefore, the allegations are denied and Defendant demands strict proof thereof.

6. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 6, therefore, the allegations are denied and Defendant demands strict proof thereof.
7. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT ONE**

8. The allegations of paragraph 8 are denied and Defendant demands strict proof thereof.
9. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 9, therefore, the allegations are denied and Defendant demands strict proof thereof.
10. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 10, therefore, the allegations are denied and Defendant demands strict proof thereof.
11. Upon information and belief, GAB Robins admits the allegations of this paragraph.
12. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 12, therefore, the allegations are denied and Defendant demands strict proof thereof.
13. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 13, therefore, the allegations are denied and Defendant demands strict proof thereof.

14. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 14, therefore, the allegations are denied and Defendant demands strict proof thereof.
15. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 15, therefore, the allegations are denied and Defendant demands strict proof thereof.
16. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 16, therefore, the allegations are denied and Defendant demands strict proof thereof.
17. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 17, therefore, the allegations are denied and Defendant demands strict proof thereof.
18. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 18, therefore, the allegations are denied and Defendant demands strict proof thereof.
19. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 19, therefore, the allegations are denied and Defendant demands strict proof thereof.
20. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 20, therefore, the allegations are denied and Defendant demands strict proof thereof.

21. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 21, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant GAB Robins denies the material allegations of paragraph 22 and demands strict proof thereof.

**COUNT TWO**

23. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 23, therefore, the allegations are denied and Defendant demands strict proof thereof.
24. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 24, therefore, the allegations are denied and Defendant demands strict proof thereof.
25. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 25, therefore, the allegations are denied and Defendant demands strict proof thereof.
26. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 26, therefore, the allegations are denied and Defendant demands strict proof thereof.
27. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 27, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

28. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 28, therefore, the allegations are denied and Defendant demands strict proof thereof.
29. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 29, therefore, the allegations are denied and Defendant demands strict proof thereof.
30. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 30, therefore, the allegations are denied and Defendant demands strict proof thereof.
31. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 31, therefore, the allegations are denied and Defendant demands strict proof thereof.
32. Defendant GAB Robins does not have sufficient information to admit or deny the allegations of paragraph 32, therefore, the allegations are denied and Defendant demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint and the Amended Complaint fails to state a cause of action upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint and the Amended Complaint against Defendant GAB Robins are untrue.

**THIRD AFFIRMATIVE DEFENSE**

The damages asserted on behalf of the Plaintiffs are the result of an intervening and/or superseding cause.

**FOURTH AFFIRMATIVE DEFENSE**

The claims against Defendant GAB Robins are barred by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of waiver, estoppel, release, accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

Imposing damages for mental anguish or emotional distress is unconstitutional under the United States Constitution and the Constitution of the State of Alabama. Current Alabama procedures relative to damages for mental anguish and emotional distress provide no objective, logical or reasonable standards or criteria to govern the award or the amount of such damages; therefore, this Defendant is denied due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I Sections 1, 6, 10, 11, 13, and 22 of the Alabama Constitution, separately and severally.

**SEVENTH AFFIRMATIVE DEFENSE**

There are no procedural safeguards for the imposition of damages for emotional distress and mental anguish. Therefore, because such damages are left to the standardless discretion of the jury, any such award would be improper and unconstitutional.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable insurance laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

This Defendant denies they are guilty of conduct for which punitive damages could or should be awarded and denies Plaintiffs have produced clear and convincing evidence to support or sustain an award of punitive damages against this Defendant.

**TENTH AFFIRMATIVE DEFENSE**

Your Defendant contests damages alleged in all Counts and paragraphs of the Complaint and the Amended Complaint and demands strict proof thereof. Specifically with regard to the claim for punitive damages, your Defendant pleads the following punitive damage defenses:

1. Plaintiffs' claim of punitive damages violates the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, Section 6 of the Constitution of Alabama, on the following grounds:

(a) It is violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United Sates Constitution to impose punitive damages, which are penal in nature, against a civil Defendant upon the Plaintiffs' satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Defendant, which thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards, or provide vague or insufficient standards, for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(g) The procedures pursuant to which punitive damages are awarded fail to require that an award of punitive damages be proportion, or bear a reasonable relationship, to the actual harm incurred;

(h) The procedures pursuant to which punitive damages are awarded fail to provide mitigating factors for the jury's consideration in awarding punitive damages.

2. Plaintiffs' claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of Alabama on the following grounds:

(a) It is a violation of the due process clause to impose punitive damages, which are penal in nature, upon a civil Defendant upon the Plaintiffs' satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the Defendant;

(c) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and

(e) The award of the punitive damages in this case constitutes a deprivation of property without due process of law.

3. Plaintiffs' attempt to impose punitive or extra contractual damages on this Defendant, on the basis of vicarious liability for the conduct by others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

4. The award of punitive damages to the Plaintiffs in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

5. The award of punitive damages against the Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article I, Section 22 of the Constitution of Alabama.

6. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the amount established by the legislature under **Alabama Code**, Section 27-1-17 (1975), in violation of the Due Process Clause of the Fifth and

Fourteenth Amendments of the United States Constitution and Article I, Section 6, of the Alabama Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

Awarding punitive damages in this case against this Defendant would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and unreasonable burden on interstate commerce.

**TWELFTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would have a chilling effect upon the Defendant's right to open access to the courts of this state, in violation of the United States Constitution and Alabama Constitution, separately and severally.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would violate the Contracts Clause of Article I, Section 10 of the United States Constitution, as an award of punitive damages would impair the contractual obligations arising out of the transaction between the Plaintiff and this Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Based upon Alabama procedures relative to punitive damages, which provide no objective, logical, reasonable standards or criteria which govern an award, and the amount of the award, of punitive damages, this Defendant are denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Sections 1, 6 and 22 of the Alabama Constitution, separately and severally.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The demand for punitive damages in this case is subject to those limitations established by the Alabama Legislature set forth in Sections 6-11-21 of the Alabama Code. The Alabama Supreme Court's action in abolishing the legislatively created cap on punitive damages was unconstitutional. Under the Constitutions of the United States and the State of Alabama, the Alabama Supreme Court cannot abolish the cap created by the legislature as to punitive damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' own actions or inactions caused or contributed to their damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This Defendant breached no duty owed to the Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the merger doctrine and the parole evidence rule.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

The insurance transactions at issue in this case were arms-length transactions.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Defendant GAB Robins has not breached the contract at issue in this case.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

An insurance adjuster, not being a party to the insurance contract cannot be held liable for bad faith. Thus, any claims against GAB Robins are due to be dismissed.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Defendant GAB Robins owed no duty to the Plaintiffs.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

The Complaint and Amended Complaint contain a misjoinder of parties and is due to be dismissed.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Defendant GAB Robins pleads the general issue and states they are not guilty of the matters charged.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Defendant, GAB Robins pleads any other matter constituting an avoidance or affirmative defense not specifically set forth herein and hereby reserves the right to amend this Answer to include any such avoidance or affirmative defense.

Respectfully submitted this the 18<sup>th</sup> day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

**OF COUNSEL:**

LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223  
Telephone: 205-967-8822  
Facsimile: 205-967-2380  
Email: [jlloyd@gwpc.com](mailto:jlloyd@gwpc.com)  
[kfarley@gwpc.com](mailto:kfarley@gwpc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 18<sup>th</sup> day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

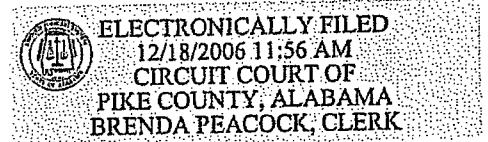
I hereby certify that a copy of the above and foregoing has been served on the following parties by placing a copy of the same in the United States Mail, properly addressed and postage prepaid on this the 18<sup>th</sup> day of December, 2006:

HILB, ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.  
Corporation Service Co.  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

KIRKLIN & COMPANY, LLC  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

RSUI GROUP, INC.  
C/O Corporation Trust Co.  
1209 Orange Street  
Wilmington, Delaware 19801

s/Karen D. Farley  
Of Counsel



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, )  
d/b/a HISTORICAL RENTALS, INC., )  
Plaintiffs, )

v. )

Civil Action No.: CV-06-246

GAB ROBINS NORTH AMERICA, )  
INC., TROY RHOADES, HILB, )  
ROGAL & HOBBS WHOLESALE )  
INSURANCE SERVICES, INC., )  
KIRKLIN & CO., LLC, A/K/A )  
HRH/KIRKLIN & CO., LLC and RSUI )  
GROUP, INC. )  
Defendants. )

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ANSWER OF DEFENDANT TROY RHOADES

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COMES NOW the Defendant, Troy Rhoades (incorrectly identified as "Troy Rhodes") and for answer to the Complaint and each count and paragraph thereof and Plaintiffs' First Amended Complaint and each count and paragraph thereof, sets down and assigns the following separate and several defenses, without waiving any substantive or procedural deficiencies in the Plaintiffs' Complaint or Amended Complaint:

**STATEMENT OF THE PARTIES**

1. Upon information and belief, Troy Rhoades admits the allegations of this paragraph.
2. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 2, therefore, the allegations are denied and Defendant demands strict proof thereof.

3. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.

**COUNT ONE**

4. The allegations of paragraph 4 are denied and Defendant demands strict proof thereof.
5. Defendant Troy Rhoades denies the allegations of paragraph 5 of the Plaintiffs' Complaint and demands strict proof thereof.
6. Defendant Troy Rhoades denies the allegations of paragraph 6 of the Plaintiffs' Complaint and demands strict proof thereof.
7. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.
8. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 8, therefore, the allegations are denied and Defendant demands strict proof thereof.
9. Defendant Troy Rhoades denies the material allegations of paragraph 9 and demands strict proof thereof.
10. Defendant Troy Rhoades denies that as a proximate consequence of a breach of contract that the plaintiffs have not been able to repair property and therefore unable to rent or lease the aforescribed property and demands strict proof thereof. Defendant Troy Rhoades is without sufficient information to admit or deny the balance of the allegations set forth in paragraph 10 and, therefore, denies the same and demands strict proof thereof.

**COUNT TWO**

11. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
12. Defendant Troy Rhoades denies the material allegations of paragraph 12 and demands strict proof thereof.
13. Defendant Troy Rhoades denies the material allegations of paragraph 13 and demands strict proof thereof.
14. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 14 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

15. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
16. Defendant Troy Rhoades denies the material allegations of paragraph 16 and demands strict proof thereof.
17. Defendant Troy Rhoades denies the material allegations of paragraph 17 and demands strict proof thereof.

**COUNT FOUR**

18. Upon information and belief, Troy Rhoades denies the allegations of this paragraph and demands strict proof thereof.
19. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 19 and, therefore, the allegations are denied and Defendant demands strict proof thereof.

20. Defendant Troy Rhoades denies the material allegations of paragraph 20 and demands strict proof thereof.
21. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 21 and, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant Troy Rhoades denies the material allegations of paragraph 22 and demands strict proof thereof.
23. Defendant Troy Rhoades denies the allegations of Plaintiffs' Complaint, contests damages and demands strict proof thereof of all claims.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

1. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 1 of the Plaintiffs' First Amended Complaint and, therefore the allegations are denied and Defendant demands strict proof thereof.
2. The allegations of paragraph 2 are admitted.
3. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 3, therefore, the allegations are denied and Defendant demands strict proof thereof.
4. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 4, therefore, the allegations are denied and Defendant demands strict proof thereof.
5. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 5, therefore, the allegations are denied and Defendant demands strict proof thereof.

6. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 6, therefore, the allegations are denied and Defendant demands strict proof thereof.

7. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 7, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT ONE**

8. The allegations of paragraph 8 are denied and Defendant demands strict proof thereof.

9. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 9, therefore, the allegations are denied and Defendant demands strict proof thereof.

10. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 10, therefore, the allegations are denied and Defendant demands strict proof thereof.

11. Upon information and belief, Troy Rhoades admits the allegations of this paragraph.

12. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 12, therefore, the allegations are denied and Defendant demands strict proof thereof.

13. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 13, therefore, the allegations are denied and Defendant demands strict proof thereof.

14. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 14, therefore, the allegations are denied and Defendant demands strict proof thereof.
15. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 15, therefore, the allegations are denied and Defendant demands strict proof thereof.
16. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 16, therefore, the allegations are denied and Defendant demands strict proof thereof.
17. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 17, therefore, the allegations are denied and Defendant demands strict proof thereof.
18. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 18, therefore, the allegations are denied and Defendant demands strict proof thereof.
19. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 19, therefore, the allegations are denied and Defendant demands strict proof thereof.
20. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 20, therefore, the allegations are denied and Defendant demands strict proof thereof.

21. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 21, therefore, the allegations are denied and Defendant demands strict proof thereof.
22. Defendant Troy Rhoades denies the material allegations of paragraph 22 and demands strict proof thereof.

**COUNT TWO**

23. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 23, therefore, the allegations are denied and Defendant demands strict proof thereof.
24. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 24, therefore, the allegations are denied and Defendant demands strict proof thereof.
25. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 25, therefore, the allegations are denied and Defendant demands strict proof thereof.
26. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 26, therefore, the allegations are denied and Defendant demands strict proof thereof.
27. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 27, therefore, the allegations are denied and Defendant demands strict proof thereof.

**COUNT THREE**

28. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 28, therefore, the allegations are denied and Defendant demands strict proof thereof.
29. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 29, therefore, the allegations are denied and Defendant demands strict proof thereof.
30. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 30, therefore, the allegations are denied and Defendant demands strict proof thereof.
31. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 31, therefore, the allegations are denied and Defendant demands strict proof thereof.
32. Defendant Troy Rhoades does not have sufficient information to admit or deny the allegations of paragraph 32, therefore, the allegations are denied and Defendant demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint and the Amended Complaint fails to state a cause of action upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint and the Amended Complaint against Defendant Troy Rhoades are untrue.

**THIRD AFFIRMATIVE DEFENSE**

The damages asserted on behalf of the Plaintiffs are the result of an intervening and/or superseding cause.

**FOURTH AFFIRMATIVE DEFENSE**

The claims against Defendant Troy Rhoades are barred by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of waiver, estoppel, release, accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

Imposing damages for mental anguish or emotional distress is unconstitutional under the United States Constitution and the Constitution of the State of Alabama. Current Alabama procedures relative to damages for mental anguish and emotional distress provide no objective, logical or reasonable standards or criteria to govern the award or the amount of such damages; therefore, this Defendant is denied due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I Sections 1, 6, 10, 11, 13, and 22 of the Alabama Constitution, separately and severally.

**SEVENTH AFFIRMATIVE DEFENSE**

There are no procedural safeguards for the imposition of damages for emotional distress and mental anguish. Therefore, because such damages are left to the standardless discretion of the jury, any such award would be improper and unconstitutional.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable insurance laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

This Defendant denies he is guilty of conduct for which punitive damages could or should be awarded and denies Plaintiffs have produced clear and convincing evidence to support or sustain an award of punitive damages against this Defendant.

**TENTH AFFIRMATIVE DEFENSE**

Your Defendant contests damages alleged in all Counts and paragraphs of the Complaint and the Amended Complaint and demands strict proof thereof. Specifically with regard to the claim for punitive damages, your Defendant pleads the following punitive damage defenses:

1. Plaintiffs' claim of punitive damages violates the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, Section 6 of the Constitution of Alabama, on the following grounds:

(a) It is violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil Defendant upon the Plaintiffs' satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Defendant, which thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards, or provide vague or insufficient standards, for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(g) The procedures pursuant to which punitive damages are awarded fail to require that an award of punitive damages be proportion, or bear a reasonable relationship, to the actual harm incurred;

(h) The procedures pursuant to which punitive damages are awarded fail to provide mitigating factors for the jury's consideration in awarding punitive damages.

2. Plaintiffs' claim of punitive damages violates the due process clause of Article I, Section 6 of the Constitution of Alabama on the following grounds:

(a) It is a violation of the due process clause to impose punitive damages, which are penal in nature, upon a civil Defendant upon the Plaintiffs' satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the Defendant;

(c) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and

(e) The award of the punitive damages in this case constitutes a deprivation of property without due process of law.

3. Plaintiffs' attempt to impose punitive or extra contractual damages on this Defendant, on the basis of vicarious liability for the conduct by others, violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

4. The award of punitive damages to the Plaintiffs in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 6 of the Alabama Constitution.

5. The award of punitive damages against the Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article I, Section 22 of the Constitution of Alabama.

6. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the amount established by the legislature under **Alabama Code**, Section 27-1-17 (1975), in violation of the Due Process Clause of the Fifth and

Fourteenth Amendments of the United States Constitution and Article I, Section 6, of the Alabama Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

Awarding punitive damages in this case against this Defendant would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and unreasonable burden on interstate commerce.

**TWELFTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would have a chilling effect upon the Defendant's right to open access to the courts of this state, in violation of the United States Constitution and Alabama Constitution, separately and severally.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To award punitive damages against this Defendant in this case would violate the Contracts Clause of Article I, Section 10 of the United States Constitution, as an award of punitive damages would impair the contractual obligations arising out of the transaction between the Plaintiff and this Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Based upon Alabama procedures relative to punitive damages, which provide no objective, logical, reasonable standards or criteria which govern an award, and the amount of the award, of punitive damages, this Defendant are denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Sections 1, 6 and 22 of the Alabama Constitution, separately and severally.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The demand for punitive damages in this case is subject to those limitations established by the Alabama Legislature set forth in Sections 6-11-21 of the Alabama Code. The Alabama Supreme Court's action in abolishing the legislatively created cap on punitive damages was unconstitutional. Under the Constitutions of the United States and the State of Alabama, the Alabama Supreme Court cannot abolish the cap created by the legislature as to punitive damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' own actions or inactions caused or contributed to their damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This Defendant breached no duty owed to the Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the merger doctrine and the parole evidence rule.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

The insurance transactions at issue in this case were arms-length transactions.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades has not breached the contract at issue in this case.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

An insurance adjuster, not being a party to the insurance contract cannot be held liable for bad faith. Thus, any claims against Troy Rhoades are due to be dismissed.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades owed no duty to the Plaintiffs.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

The Complaint and Amended Complaint contain a misjoinder of parties and is due to be dismissed.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Defendant Troy Rhoades pleads the general issue and states he is not guilty of the matters charged.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Defendant, Troy Rhoades pleads any other matter constituting an avoidance or affirmative defense not specifically set forth herein and hereby reserves the right to amend this Answer to include any such avoidance or affirmative defense.

Respectfully submitted this the 18<sup>th</sup> day of December, 2006.

s/Karen D. Farley

JAMES S. LLOYD(LLO004)

KAREN D. FARLEY(FAR035)

Attorneys for Defendants, GAB Robins  
North America, Inc. and Troy Rhoades

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties electronically using the Alabama Electronic Filing System by facsimile and by placing a copy of same in the United States Mail, properly addressed and postage prepaid, this the 18<sup>th</sup> day of December, 2006, to:

Matthew M. Baker, Esq.  
N. J. Cervera, Esq.  
Cervera Ralph & Reeves, LLC  
914 S. Brundidge Street  
P.O. Box 325  
Troy, Alabama 36081  
Telephone: 334-566-0116  
Facsimile: 334-566-4073  
Email: [mbaker@troycable.net](mailto:mbaker@troycable.net)  
[ncervera@troycable.net](mailto:ncervera@troycable.net)

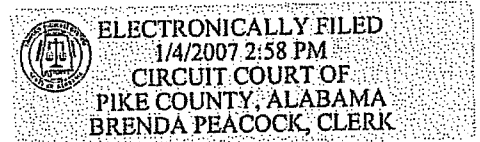
I hereby certify that a copy of the above and foregoing has been served on the following parties by placing a copy of the same in the United States Mail, properly addressed and postage prepaid on this the 18<sup>th</sup> day of December, 2006:

HILB, ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.  
Corporation Service Co.  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

KIRKLIN & COMPANY, LLC  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

RSUI GROUP, INC.  
C/O Corporation Trust Co.  
1209 Orange Street  
Wilmington, Delaware 19801

s/Karen D. Farley  
Of Counsel



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE AND METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC ,

Plaintiffs,

vs

GAB ROBINS NORTH AMERICA, INC.,  
et al ,

Defendants.

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NO. CV-2006-246-RWB

**ANSWER OF RSUI INDEMNITY COMPANY TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

COMES NOW Defendant RSUI Indemnity Company (hereinafter "RSUI"), and in response to Plaintiff's First Amended Complaint and each cause of action contained therein states as follows:

**FIRST DEFENSE**

Responding to the First Amended Complaint paragraph by paragraph, and reserving all defenses, Defendant states as follows:

**STATEMENT OF THE PARTIES**

1 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same

2 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

3 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 3 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

4 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

5 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

6 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint, thus to the extent a response is required, Defendant denies same.

7 RSUI admits that it is a Delaware corporation and doing business in Alabama. Defendant denies the remaining allegations contained in paragraph 7 of Plaintiff's First Amended Complaint.

#### COUNT 1

8 Defendant reasserts and incorporates its responses to paragraphs 1 - 7 as set forth above.

9 Defendant admits that an insurance policy effective April 1, 2004, existed which provided insurance to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's First Amended Complaint.

10 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others. Defendant denies the remaining allegations contained paragraph 10 of Plaintiff's First Amended Complaint.

11 Defendants admits that GAB was the adjusting company for Plaintiff's claims under said policy. Defendant denies the remaining allegations contained paragraph 11 of Plaintiff's First Amended Complaint.

12 Defendant admits that a named storm made landfall on September 16, 2004. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 12 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

13 Defendant is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 13 of Plaintiff's First Amended Complaint; therefore, Defendant denies same.

14 Denied

15 Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count One of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner.

## COUNT 2

16 - 19 The allegations contained in paragraphs 16 - 19, including the last unnumbered paragraph of Count Two, are not directed to this Defendant; thus, no response is required. To the

extent a response is required, Defendant denies same, and denies that Plaintiff is entitled to recover from it in any manner

**COUNT 3**

20. Defendant reasserts and incorporates its responses to paragraphs 1 - 19 as set forth above

21. Defendant admits that Plaintiffs made a claim with agents of RSUI. Defendant denies the remaining allegations contained in paragraph 21 of Plaintiff's First Amended Complaint

22. Denied

Defendant denies the allegations contained in the last unnumbered paragraph contained in Count Three of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

**COUNT 4**

23. Defendant reasserts and incorporates its responses to paragraphs 1 - 22 as set forth above

24. Defendant admits that Plaintiff reported damage to their property to an agent of Defendant RSUI. Defendant denies the remaining allegations contained in paragraph 24 of Plaintiff's First Amended Complaint

25. The allegations contained in paragraph 25 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required. To the extent a response is required, Defendant admits that Defendant GAB acted as an adjuster. Defendant denies the remaining allegations contained in paragraph 25 of Plaintiff's First Amended Complaint.

26 The allegations contained in paragraph 26 of Plaintiff's First Amended Complaint are not directed to this Defendant; thus, no response is required To the extent a response is required, Defendant denies same

27 Denied.

#### COUNT 5

28 Defendant reasserts and incorporates its responses to paragraphs 1 - 27 as set forth above

29 Defendant admits that Plaintiff's reported damage to their property to Defendant GAB Defendant denies the remaining allegations contained in paragraph 29 of Plaintiff's First Amended Complaint.

30 Defendant admits that an insurance policy exists which sets forth the terms and obligations of Defendant to pay for damage done to Plaintiff's real property situated in Troy, Alabama that is rented or leased to others Defendant denies the remaining allegations contained paragraph 30 of Plaintiff's First Amended Complaint.

31 Defendant admits Plaintiff's claims arising out of a date of loss of September 23, 2004, did not meet Plaintiff's deductible under the policy; therefore, no payment has been made.

32 Denied.

Defendant denies the allegations contained in the last unnumbered paragraph of Count Five of Plaintiff's First Amended Complaint, and denies that Plaintiff is entitled to recover from it in any manner

#### FIRST DEFENSE

RSUI committed no act that proximately caused or contributed to any damages sustained by Plaintiff

**SECOND DEFENSE**

The injuries and damages complained of herein resulted from the acts or omissions of persons or entities other than RSUI. Alternatively, said acts or omissions of persons or entities other than RSUI constitute an independent, superseding cause to the injuries and damages complained of herein; hence, Plaintiff ought not to recover.

**THIRD DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable Alabama statute.

**FOURTH DEFENSE**

RSUI has not breached any duty owed to Plaintiff by virtue of any applicable state or federal rules, regulations, or standards.

**FIFTH DEFENSE**

Each and every claim stated in Plaintiff's First Amended Complaint is barred in whole or in part by the applicable statute of limitations and/or the doctrine of laches.

**SIXTH DEFENSE**

RSUI is entitled to a set-off and credit for any and all sums paid to or on behalf of Plaintiff by any other party or collateral source as a result of or related to this lawsuit.

**SEVENTH DEFENSE**

RSUI pleads accord and satisfaction.

**EIGHTH DEFENSE**

RSUI pleads all applicable portions of policy of insurance issued by RSUI to Fraternal Property Management Association, policy number NHD332474 for the policy period April 1,

2004, through April 1, 2005 Said policy is attached hereto as Defendant RSUI's Exhibit "A" to its Answer herein

**NINTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

B. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of physical loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and the amount of physical loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1 pay its chosen appraiser; and
- 2 bear the other expenses of the appraisal and umpire equally

**TENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

C Duties in the Event of Loss or Damage

- 1 You must see that the following are done in the event of loss or damage to Covered Property:
  - a Notify the police if a law may have been broken.
  - b Give us prompt notice of the loss or damage. Include a description of the property involved

- c As soon as possible, give us a description of how, when, and where the loss or damage occurred
- d Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such loss, for consideration in a settlement of the claim. However, we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a Covered Cause of Loss. This will not increase the Limit of Insurance. Also, if feasible, set damage to property aside and in the best possible order, for examination.
- e At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claim.
- f As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- g Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- h Cooperate with us in the investigation or settlement of the claim.

#### ELEVENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97) which states that:

Loss Conditions:

F. Other Insurance:

- 1 You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Covered Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.

- 2 If there is other insurance covering the same loss or damage, other than that described in 1 above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage.

#### TWELFTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

Loss Conditions:

J Vacancy

2. Vacancy provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- a We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
- (1) vandalism;
  - (2) sprinkler leakage, unless you have protected the system against freezing;
  - (3) building glass breakage;
  - (4) water damage;
  - (5) theft; or
  - (6) attempted theft.

#### THIRTEENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 01 (11/97), which states that:

K Valuation:

- 2 If replacement cost is indicated in the Declarations as the method valuation we will determine the value of Covered Property in the event of loss or damage as follows:

- a. At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b through j below:
- j. The cost of repair or replacement does not include any increase costs attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### **FOURTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions under amount:**

- 1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss

- a. Ordinance or law

The enforcement of any ordinance or law:

- (1) regulating construction; use or repair of any property; or
- (2) requiring the tearing down of any property including the costs of removing its' debris

This exclusion, ordinance or law, applies whether the loss results from:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) the increased cost incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolishing of property or removal of its debris, following a direct physical loss or damage to that property.

#### **FIFTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

**C Exclusions:**

2 We will not pay for loss or damage caused by or resulting from any of the following:

- d. (1) Wear and tear;
- (2) rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality and property that causes it to damage or destroy itself;

#### SIXTEENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

C. Exclusions:

3 We will not pay for the loss or damage caused by or the resulting from any of the following 3a through 3c But if an excluded Cause of Loss that is listed in 3a. through 3c results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c Faulty, inadequate or defective:

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

of part or all of any property own on off the described premises.

#### SEVENTEENTH DEFENSE

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form SB 86 02 (04/99), which states that:

H. Deductible:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance The Deductible clause does not apply to Business Income

**EIGHTEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Deductible Amounts:

\$10,000 Tenant vandalism.

**NINETEENTH DEFENSE**

Without waiving the applicability of any other portion of the policy of insurance, RSUI pleads this specific portion of the policy contained in Form AES 119B (10/96), which states that:

Valuation:

Building: Replacement Cost – Agreed Amount; Contents: Replacement Cost, 90% Coinsurance

**TWENTIETH DEFENSE**

Insurance companies are the only defendant subjected to punitive damages under Alabama Law for breach of the implied duty of good faith which exists in every contract – thus creating a distinction that is under-inclusive and not rationally tailored to accomplish a legitimate state interest; wherefore, the imposition of punitive damages would violate the equal protection clause of the Fifth and Fourteenth Amendments of the United States Constitution and deprive RSUI of the right to equal protection under the law as provided in Article I, Section 1, 6 and 22 of the Alabama Constitution of 1901.

**TWENTY-FIRST DEFENSE**

The imposition of punitive damages against an insurance company for asserting non-frivolous legal defenses to an insurance claim violates the, “right of access to the Courts,” and the, “right to seek assistance of counsel,” as guaranteed by the First and Fourteenth Amendments

to the United States Constitution and Article I, Sections 1, 6, and 22 of the Alabama Constitution of 1901

**TWENTY-SECOND DEFENSE**

Plaintiffs have asserted tort claims that allow for the imposition of punitive damages in certain cases. The imposition of punitive damages in this case would violate the due process clause of Amendments V and XIV to the United States Constitution and Article I, Section 6 of the Alabama Constitution of 1901 because the imposition of punitive damages would violate this defendant's right to substantive due process.

**TWENTY-THIRD DEFENSE**

The imposition of punitive damages under Alabama law would violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and Articles 1, 6 and 22 of the Alabama Constitution, in each of the following ways:

- (a) Alabama law permits the imposition of unlimited punitive damages that are vastly disproportionate to any actual or compensatory injury, thereby violating the 14th Amendment of the U.S. Constitution
- (b) Disproportionate punitive damages constitute an arbitrary and capricious taking of property that is unjustified by any rational governmental interest, thereby violating the 5th and 14th Amendments of the U.S. Constitution
- (c) The award of any punitive damages without specific standards to guide the jury's discretion in determining the amount of damages is contrary to due process under the 14th Amendment of the U.S. Constitution.
- (d) Alabama does not provide a reasonable limit on the amount of any punitive damages award, thus violating the 14th Amendment of the U.S. Constitution
- (e) The substantive standards of liability under which punitive damages are sought in this case are ambiguous, subjective, and not reasonably ascertainable, and are thus "void for vagueness" under the 14th Amendment of the U.S. Constitution

- (f) Alabama fails to provide a clear, objective and consistent appellate standard for post-verdict review of punitive damages thus violating the 5th and 14th Amendments of the United States Constitution.
- (g) Alabama law permits civil punishment upon a standard of proof less than that required for the imposition of criminal sanctions
- (h) Alabama law permits joint and several punishment of defendants who are guilty of different acts and degrees of culpability
- (i) Alabama law permits multiple awards of punitive damages for the same alleged act or omission

#### **TWENTY-FOURTH DEFENSE**

Alabama's punitive damages law violates the Fifth Amendment guarantee against self-incrimination under the U.S. Constitution because said claim is penal in nature, while defendant is required to disclose documents and/or other evidence against its interest under the rules of discovery and evidence.

#### **TWENTY-FIFTH DEFENSE**

The award of any damages under the allegations of this complaint would violate the prohibition against laws that impair the obligations of contracts in violation of the Contract Clause, Article I Sec 10 cl 1, of the United States Constitution and Article I, Section 22, of the Constitution of Alabama, in that the claims are in derogation express terms contained in the insurance policy made basis of this action and contractually agreed upon by defendant and the named insured

#### **TWENTY-SIXTH DEFENSE**

Pursuant to ALA. CODE § 6-11-21, there is a cap on the amount of punitive damages recoverable in this action.

**TWENTY-SEVENTH DEFENSE**

Pursuant to ALA CODE § 6-11-21, RSUI is not liable for any portion of any award of punitive damages wherein there have been no express findings that RSUI engaged in conduct as defined in ALA CODE § 6-11-20. RSUI is not jointly and severally liable to Plaintiffs for any award of punitive damages based upon the conduct of any other defendant.

**TWENTY-EIGHTH DEFENSE**

The imposition of punitive damages against RSUI in an amount exceeding any actual and potential harm by an excessive and/or unconstitutional ratio violates RSUI's due process rights as guaranteed by the United States Constitution.

**TWENTY-NINTH DEFENSE**

The imposition of punitive damages under Alabama's current system fails to provide fair notice to RSUI that the alleged wrongful conduct could subject RSUI to punishment and also fails to provide fair notice of the severity of the punishment that the State could impose through an award of punitive damages. This lack of fair notice violates RSUI's due process rights, both procedural and substantive, as guaranteed by the United States Constitution.

**THIRTIETH DEFENSE**

The imposition of punitive damages against RSUI in this case, if any, violates RSUI's due process rights as guaranteed by the United States Constitution because the award of punitive damages is excessive in light of the following criteria: (1) the degree of reprehensibility of the RSUI's alleged wrongful conduct; (2) the disparity between the harm or potential harm and the punitive damage award; and (3) the difference between the punitive damage award and the civil penalties authorized or imposed in other cases.

**THIRTY-FIRST DEFENSE**

The procedure for determining punitive damages specified under Alabama law violates RSUI's right to due process, and otherwise violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, because the procedure for determining punitive damages under Alabama law does not provide meaningful guidance to a jury in the determination of an appropriate punitive damages award and does not constrain a jury or otherwise reduce the risk of an arbitrary or grossly excessive punitive damages verdict

**THIRTY-SECOND DEFENSE**

Any award of punitive damages in this case would violate the Eighth Amendment to the U S Constitution as an excessive fine. Also, any award of punitive damages in this case would violate Article I, § 15 of the Alabama Constitution as an excessive fine.

**THIRTY-THIRD DEFENSE**

The imposition of punitive damages violates the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Article I, §§ 6 and 15 of the Constitution of Alabama by failing to provide clear, distinct, and adequate guidelines as to each of the following: (a) the general standards applicable to such an award; (b) the appropriate and specific standards and/or burdens of proof for such an award; (c) the amount of a punitive award; (d) the appropriate procedures for a punitive award; (e) the appellate standard of review of an award of punitive damages; (f) trifurcation of the proceedings with respect to whether compensatory liability and damages should be imposed, whether punitive damages should be imposed, and what amount of punitive damages should be imposed in order to prevent the inappropriate admission of evidence regarding punitive damages.

**THIRTY-FOURTH DEFENSE**

RSUI contends that the limits on punitive damages imposed by ALA. CODE § 6-11-21 should apply as a matter of rule and established public policy without alteration or amendment by the Court and that § 6-11-21 is constitutional. RSUI further contends that the principle of deference to the legislature's will should prevail with respect to the limits imposed on punitive damages awards and that any holding that does not so defer violates the separation of powers clauses of the Constitution of the United States and the Constitution of the State of Alabama.

**THIRTY-FIFTH DEFENSE**

Plaintiffs have failed to state a claim for which relief can be granted.

**THIRTY-SIXTH DEFENSE**


All allegations contained in Plaintiffs' First Amended Complaint that are not specifically admitted are denied.

**THIRTY-SEVENTH DEFENSE**

Plaintiff is not entitled to recovery to the extent that any damages were caused by Plaintiff's failure to mitigate damages.

**THIRTY-EIGHTH DEFENSE**

RSUI reserves the right to amend its answer and assert such additional defenses as may be available upon the development of facts in the discovery process or otherwise in the course of this litigation and under applicable substantive law.

  
HELEN JOHNSON ALFORD (ALF002)  
JUAN C. ORTEGA (ORT001)  
Attorneys for Defendant, RSUI Group

OF COUNSEL:

ALFORD, CLAUSEN & McDONALD, LLC  
One St Louis Centre, Suite 5000  
Mobile, Alabama 36602  
(251) 432-1600  
(251) 432-1700 (fax)

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

N J Cervera, Esq  
Matthew Baker, Esq  
CERVERA, RALPH & REEVES, LLC  
914 South Brundidge Street  
Troy, AL 36081

James S. Lloyd, Esq  
Karen D Farley, Esq  
LLOYD, GRAY & WHITEHEAD, P.C.  
2501 Twentieth Place North, Suite 300  
Birmingham, AL 35223

Done this 4<sup>TH</sup> day of JANUARY, 2007

  
COUNSEL

## COMMON POLICY DECLARATION



THIS POLICY IS ISSUED BY THE COMPANY INDICATED BY "X" BEFORE THE COMPANY NAME BELOW

☐ Landmark American Insurance Company  
(An Oklahoma Stock Co.)

☒ RSUI Indemnity Company  
(A New Hampshire Stock Co.)

BRANCH ADDRESS: 945 E. Paces Ferry Rd., #1800, Atlanta, GA 30326

POLICY NO. NHD332474

RENEWAL OF: R2HD327878

NAMED INSURED AND MAILING ADDRESS:

PRODUCER:

Fraternal Property Management Association  
(Name Incomplete - See FPMA Named Insured End )  
425 N. Martingale Road  
Suite 1100  
Schaumburg, IL 60173

POLICY PERIOD: From 04/01/2004 To 04/01/2005 12:01 A.M. Standard Time at your Mailing Address above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.  
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COVERAGE PARTS		PREMIUM		COMM
<input checked="" type="checkbox"/> Commercial Property	RSG40001 (1203)	Excluding TRIA	\$ 6,253,162.	
<input type="checkbox"/> Commercial General Liability			\$	DO NOT WRITE IN THIS AREA
<input type="checkbox"/> Crime and Fidelity			\$	
<input type="checkbox"/> Commercial Inland Marine			\$	
<input type="checkbox"/> Boiler and Machinery			\$	
<input type="checkbox"/> Commercial Automobile			\$	
<input type="checkbox"/> Farm			\$	
<input type="checkbox"/>			\$	
<input type="checkbox"/>			\$	
<input type="checkbox"/> Premium is payable in installments: See endorsement.		TOTAL POLICY PREMIUM	\$ 6,355,744.	
		Premium Excluding TRIA	\$ 6,253,162	
		TRIA Premium	\$ 102,582.	

FORMS APPLICABLE TO ALL COVERAGE PARTS: (Show numbers)  
See attached Forms and Endorsements Schedule

BUSINESS DESCRIPTION: Fraternities

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE FORMS(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE CONTRACT OF INSURANCE.

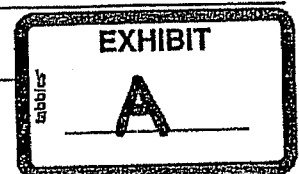
Countersigned 9/9/04  
Date

By:

Authorized Representative

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RSG 40003 0704



A member of Alleghany Insurance Holdings LLC

R/ 1 INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA:	\$10,304.
Additional TRIA Premium:	\$ 169
Total Additional Premium Due This Endorsement:	\$10,473.

It is hereby agreed that the premium shown above is due for the 4<sup>th</sup> Quarter.

All other terms, conditions and warranties remaining unchanged

This endorsement effective 01/01/2005  
forms part of Policy Number NHD332474  
issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 4  
Date Processed : 04/21/2005

*James A. Dwyer*

RSUI INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA:	\$75,895.
Additional TRIA Premium:	\$ 1,245
Total Additional Premium Due This Endorsement:	\$77,140.

It is hereby agreed that the premium shown above is due for the 3<sup>rd</sup> Quarter

All other terms, conditions and warranties remaining unchanged

This endorsement effective 11/01/2004  
forms part of Policy Number NHD332474  
Issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 3  
Date Processed : 02/15/2005

*James A. Dipeolu*

R. JI INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Additional Premium Excluding TRIA: \$78,309.

Additional TRIA Premium: \$ 1,285.

Total Additional Premium Due This Endorsement: \$79,594

It is hereby agreed that the premium shown above is due for the 2<sup>nd</sup> Quarter.

All other terms, conditions and warranties remaining unchanged.

This endorsement effective 08/01/2004  
forms part of Policy Number NHD332474  
Issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No.: 2  
Date Processed : 10/18/2004

*James A. Digo*

RSM INDEMNITY COMPANY

*This Endorsement Changes The Policy. Please Read It Carefully*

Return Premium Excluding TRIA:	\$28,809.
Return TRIA Premium:	\$ 473.
Total Return Premium Due This Endorsement:	\$29,282.

It is hereby agreed the above premium is returned for the 1<sup>st</sup> Quarter

All other terms, conditions and warranties remaining unchanged.

This endorsement effective 04/01/2004  
forms part of Policy Number NHD332474  
issued to Fraternal Property Management  
Association  
Authorized Representative

Endorsement No : 1  
Date Processed : 09/14/2004

*James A. Dyer*



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

IL 70 01 (Ed. 05 92)

Policy No. NHD332474  
Renewal of R2HD327878

### BUSINESSPRO POLICY COMMON DECLARATIONS

<b>NAMED INSURED AND ADDRESS:</b> Fraternal Property Management Association c/o 425 N. Martingale Road Ste. 1100 Schaumburg, IL 60173		<b>POLICY PERIOD:</b> 12:01 A.M. Standard Time at the address of the Named Insured shown at left. From: 4/1/04 To: 4/1/05
<b>IN RETURN FOR PAYMENT OF THE PREMIUM,          AND SUBJECT TO ALL TERMS OF THIS          POLICY, WE AGREE WITH YOU TO PROVIDE          THE INSURANCE AS STATED IN THIS          POLICY.</b>	<b>AGENT'S NAME AND ADDRESS:</b> Swett and Crawford of Illinois, Inc. 1 North Franklin Chicago, IL 60606	

Insurance is afforded by the company indicated below:  
(Each a capital stock corporation)

( X ) RSUI Indemnity Company.

This policy consists of the following Coverage  
parts for which a premium is indicated. This  
premium may be subject to adjustment.

Commercial Property	\$on file w/Company
Commercial General Liability	NOT INCLUDED
Commercial Crime	NOT INCLUDED
Commercial Inland Marine	NOT INCLUDED
Commercial Boiler and Machinery	NOT INCLUDED
Commercial Auto	NOT INCLUDED
Commercial Umbrella	NOT INCLUDED

TOTAL \$ annually subject to annual  
rating

Premium shown is payable: At inception;

FORMS AND ENDORSEMENTS applicable to all Coverage Parts and made part of this  
Policy at time of issue are listed on the attached Forms and Endorsements  
Schedule SB.88 01 (11/85).

Countersigned \_\_\_\_\_

Date

By \_\_\_\_\_

*James A. Dyer*

Authorized Representative

IL 70 01 (Ed. 05/92) PRO

BUSINESSPRO (Reg. U.S. Pat. Off.)  
(Page 1 of 1)



RSUI Group, Inc.  
945 East Paces Ferry Road  
Suite 1890  
Atlanta, GA 30326

**NAMED INSURED WORDING  
RSUI INDEMNITY COMPANY  
POLICY # NHD332474**

**FIRST NAMED INSURED:**

FRATERNAL PROPERTY MANAGEMENT ASSOCIATION  
C/o 425 N. MARTINGALE ROAD  
SUITE 1100  
SCHAUMBURG, IL 60173

**BROAD NAMED INSURED:**

ALL FRATERNAL PROPERTY MANAGEMENT ASSOCIATION PARTICIPATING ENTITIES PER THE  
RECORDS ON FILE WITH HOBBS GROUP/KIRKLIN & COMPANY, LLC.

**FPMA NAMED INSURED ENDORSEMENT**

IL 00 17 11 98

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

IL 00 17 11 98

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□

POLICY NUMBER: NHD332474

COMMERCIAL PROPERTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LOSS ADJUSTMENT ENDORSEMENT – COMMERCIAL PROPERTY COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
BUSINESS INCOME COVERAGE FORM (AND EXTRA EXPENSE)  
BUSINESS INCOME COVERAGE FORM (WITHOUT EXTRA EXPENSE)  
EXTRA EXPENSE COVERAGE FORM  
TOBACCO SALES WAREHOUSES COVERAGE FORM  
STANDARD PROPERTY POLICY

- A. This endorsement is intended to facilitate payment of insurance proceeds in the event of loss or damage to Covered Property from a loss that is covered by:
1. This Commercial Property coverage; and
  2. Boiler and Machinery insurance; and
- there is a disagreement between the insuring companies as to the amount of the loss to be paid by each company.
- B. The provisions of item C. of this endorsement apply only if all of the following requirements are met:
1. The Boiler and Machinery insurance carried by the named insured, insuring the Covered Property, contains a provision with substantially the same requirements, procedures and conditions as contained in this endorsement.
  2. The damage to the Covered Property was caused by a loss for which both we and the Boiler and Machinery insuring company(s) admit to some liability for payment under the respective policies.
  3. The total amount of the loss is agreed to by you, us and the Boiler and Machinery insuring company(s).
  4. We and the Boiler and Machinery insuring company(s) disagree as to the amount of loss that each of us should pay that is attributable to:
    - a. A cause of loss covered under this Commercial Property coverage; and
    - b. An "accident" covered under the Boiler and Machinery Insurance.
- C. If the requirements listed in B. above are satisfied, we and the Boiler and Machinery insuring company(s) will make payments to the extent, and in the manner, described in the following:
1. We will pay, after your written request, the entire amount of loss that we have agreed as being covered by this Commercial Property coverage and one-half (1/2) the amount of loss that is in disagreement.
  2. The Boiler and Machinery insuring company(s) will pay, after your written request, the entire amount of loss that they have agreed as being covered by the Boiler and Machinery Insurance and one-half (1/2) the amount of loss that is in disagreement.
  3. The amount in disagreement to be paid by us under this endorsement shall not exceed the amount payable under the equivalent Loss Adjustment Endorsement(s) of the Boiler and Machinery insuring company(s).
  4. The amount to be paid under this endorsement shall not exceed the amount we would have paid had no Boiler and Machinery Insurance been in effect at the time of loss.
  5. Acceptance by you of sums paid under this endorsement does not alter, waive or surrender any other rights against us.
  6. **ADDITIONAL CONDITIONS**
    - a. We and the Boiler and Machinery insuring company(s) agree to submit our differences to arbitration within 90 days after loss payment made under the terms of this endorsement.
    - b. You agree to cooperate with any arbitration procedures. There will be three arbitrators: one will be appointed by us, and another will be appointed by the Boiler and Machinery insuring company(s). The two arbitrators will select a third arbitrator. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. A decision agreed to by two of the three arbitrators will be binding on both parties. Judgment on any award can be entered in any court that has jurisdiction.

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

1. POLICY NO. NHD332474EFFECTIVE DATE 04/01/042. NAMED INSURED Fraternity Property Management AssociationRENEWAL OF R2HD327878

## 3. DESCRIPTION OF PREMISES

☐ "X" If supplemental declarations attached

Prem. No.	Bldg. No.	Location, Construction and Occupancy
**	**	**Per Schedule on file with Company

## COVERAGES PROVIDED - Insurance of the described premises applies only for coverages for which a limit of insurance is shown.

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coinsurance*	Rates
**	**	Building, Contents and Rents	\$ 5,000,000. per occurrence and annual aggregates as respects Flood & Earthquake	Special	90%	Included

\*IF EXTRA EXPENSE COVERAGE, LIMITS ON LOSS PAYMENT

## OPTIONAL COVERAGES - Applicable only when entries are made in the schedule below.

Prem. No.	Bldg. No.	Agreed Value Expiration Date	Coverage	Amount	Building	Replacement Cost (X) Personal Property	Including "Stock"
**	**				X	X	

Prem. No.	Bldg. No.	Inflation Guard (Percentage)	* Monthly Limit of Indemnity (Fraction)	* Maximum Period of Indemnity (X)	* Extended Period of Indemnity (Days)
		Building Personal Property			

\* APPLIES TO BUSINESS INCOME ONLY

## 4. MORTGAGE HOLDERS

Prem. No.	Bldg. No.	Mortgage Holder Name and Mailing Address

## 5. DEDUCTIBLE

See attached Manuscript Form

## TOTAL PREMIUM

FOR THIS \$ Included  
COVERAGE PART

## 6. FORMS / ENDORSEMENTS APPLICABLE

See attached  
Manuscript Form

THESE DECLARATIONS, WHEN COMBINED WITH THE COMMON POLICY DECLARATIONS, THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE CONTRACT OF INSURANCE.

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RSG 40001 1203

**FORMS AND ENDORSEMENTS SCHEDULE**

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

RSUI Dec Sheet  
EXCLUSION AND LIMITED ADDITIONAL COVERAGE FOR FUNGUS  
RSG94060 (03/04)  
RSG96006 (09/03)  
RSG96014 (05/04)  
IL7001 (05/92)  
FPMA Named Insured Endorsement  
IL0017 (11/98)  
CP1260 (10/91)  
RSG40001 1203  
SELECT BUSINESS POLICY PLUS COVERAGES FOR FRATERNITIES (10/96)  
SB8605 (11/97)  
SB8602 (04/99)  
SB8605 (11/97)  
CM7658 (12/98)  
CM0020 (06/95)  
CM7669 (01/89)  
CP0040 (06/95)  
SB8696 (11/97)  
HURRICANE DEDUCTIBLE FORM  
CM0001 (0900)  
CM7668 (07/90)  
CM7661 (11/99)  
CM0066 (06/95)  
CM00067 (09/00)  
IL0903 (04/98)  
ILLINOIS CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
INDIANA CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
KENTUCKY CHANGES – MINE SUBSIDENCE  
IL0903 (04/98)  
WEST VIRGINIA CHANGES – MINE SUBSIDENCE  
RSG96013 (10/03)

SB8801 (11/85)

PAGE 1 OF 1

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION AND LIMITED ADDITIONAL COVERAGE FOR FUNGUS**

This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

**A. The following Exclusion is added:**

**EXCLUSION - "Fungus", Wet Rot, Dry Rot And Bacteria**

We will not pay for loss or damage caused directly or indirectly by the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But if "fungus", wet or dry rot or bacteria results in a "covered cause of loss", we will pay for the loss or damage caused by that "covered cause of loss"

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

**B. The following Additional Coverage is added:**

**ADDITIONAL COVERAGE - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. This limited coverage applies only when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence, and only if any loss resulting from the following is reported to us within 60 days of the occurrence.
  - a. A "covered cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. Under conditions described in item B.1. above, we will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present
3. The coverage provided under this Limited Coverage is limited to \$15,000. per location subject to a policy annual aggregate limit of \$250,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000. per location subject to a policy annual aggregate limit of \$250,000. even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property

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If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

C. The following Definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SCHEDULED LIMIT OF LIABILITY**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

It is understood and agreed that the following special terms and conditions apply to this policy:

1. In the event of loss hereunder, liability of the Company shall be limited to the least of the following in any one "occurrence":
  - a. The actual adjusted amount of the loss, less applicable deductibles;
  - b. 100% of the individually stated value for each scheduled item of property insured at the location which had the loss as shown on the latest Statement of Values on file with this Company, less applicable deductibles. If no value is shown for a scheduled item then there is no coverage for that item; or
  - c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.
2. Coverage under this policy is provided only at the locations listed on the latest Statement of Values on file with this Company or as endorsed on to this policy.
3. The premium for this policy is based upon the Statement of Values on file with this Company or attached to this policy

The term "occurrence", where used in this policy, shall mean any one loss, disaster, casualty or series of losses, disasters, or casualties arising from one event.

When the term "occurrence" applies to a loss or series of losses from the perils of tornado, cyclone, hurricane, windstorm, hail, flood, earthquake, volcanic eruption, riot, riot attending a strike, civil commotion and vandalism and malicious mischief, one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing a proof of loss the insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to occur at any covered location.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – ELECTRONIC PROPERTY AND VIRUS**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

**A. It is agreed the following definitions apply:**

"Electronic Data" means information, facts or "Computer Programs" stored, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy discs, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

"Computer Programs" means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data

"Virus" means a harmful code or similar instructions introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt normal operations

**B. The following exclusion applies:**

**Damage to Electronic Data**

Damage to "Electronic Data", including any cost to replace or restore such "Electronic Data" that is caused by a "Virus" is not covered.

Damage to "Electronic Data" caused by the willful or malicious alteration, manipulation or destruction of such "Electronic Data" by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace your computer systems or any part of those systems, is not covered.

However, this exclusion does not apply to damage to "Electronic Data" arising from the following specified causes of loss, if these causes of loss are not otherwise excluded: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of ice, snow or sleet, or water damage.

**C. The following is added to the Business Income (and Extra Expense) Coverage Form, if it applies:**

**Additional Limitation- Interruption of Computer Operations**

Business Income loss incurred when a "suspension" of "operations" is caused by destruction or corruption of "Electronic Data" or any loss or damage to "Electronic Data", caused by a "Virus" is not covered.

Extra Expense loss incurred when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of "Electronic Data" or any loss or damage to "Electronic Data", caused by a "Virus" is not covered.

However, this limitation will not apply to destruction, corruption, loss or damage to "Electronic Data" arising from the following specified causes of loss, if these causes of loss are not otherwise excluded: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of ice, snow or sleet, or water damage

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION OF PATHOGENIC OR POISONOUS BIOLOGICAL OR CHEMICAL MATERIALS**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

The following exclusion is added:

We will not pay for loss or damage caused directly or indirectly by the discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

However, if both A. and B. below apply, we will pay up to a maximum of \$10,000 for any and all claims for such loss or damage arising out of events occurring within the term of this policy:

- A. The pathogenic or poisonous biological or chemical materials are normally kept at or brought onto your premises, with your consent, for use in your business operations at your premises; and
- B. The discharge, dispersal, seepage, migration, release, escape or application of the pathogenic or poisonous biological or chemical materials is accidental and is not the result of a willful or malicious act against any persons, organizations, or property of any nature.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

SB 86 96 (Ed. 11 97)

**FRATERNITY SELECT BUSINESS POLICY PLUS**

**NAMED INSURED: Fraternal Property  
Management Association**

**POLICY PERIOD: 4/1/2004 to 4/1/2005**

**TOTAL PROPERTY PREMIUM: \$\*as previously billed Annually subject to annual rating**

**DEDUCTIBLE AMOUNTS:**

\$100,000 Flood -- Zone A or V only	\$25,000 Flood -- all other
\$25,000 Earthquake (Other than CA see endorsement)	\$10,000 --Vacant Locations
\$10,000 Named Storm (see special endorsement)	\$10,000 -- Freeze Claims
\$10,000 Tenant Vandalism	
\$2,500 All Other	

All above deductibles apply per location, for each occurrence

**NOT AT A DESCRIBED PREMISES:**

Insurance is provided only for those coverages for which a Limit of Insurance has been inserted:

	Newly Acquired or constructed Locations	At any other location	In transit, in or on any one conveyance unit
Building	\$250,000	NOT COVERED	NOT COVERED
Business Personal Property	INCLUDED ABOVE	\$10,000	\$10,000
Business Income	INCLUDED ABOVE	NOT COVERED	NOT COVERED
Extra Expense	INCLUDED ABOVE	INCLUDED ABOVE	NOT COVERED

**DESCRIBED PREMISES:**

At the locations specified below, insurance is provided for those coverages for which a Limit of Insurance has been inserted:

Location: Building: Address:  
As per Statement of Values on file.

BUILDING, BUSINESS PERSONAL PROPERTY and BUSINESS INCOME INCLUDING EXTRA EXPENSE:

VALUATION: Building: Replacement Cost -- Agreed Amount; Contents: Replacement Cost, 90% Coinsurance

Minimum Valuation Requirement for Participation in Property Program: Valuation at 100% of Marshall Swift on File with Hobbs group/Kirklin & Co., LLC.

MORTGAGEHOLDER: As per statement of values on file with Hobbs Group/Kirklin & Co., LLC at 12231 Emmet Street, Suite 5, Omaha, NE 68164 and RSUI Indemnity Company, 945 East Paces Ferry Road, Suite 1890, Atlanta, GA 30326

CERTIFICATES OF INSURANCE/EVIDENCE OF PROPERTY INSURANCE: Any Certificate of Insurance issued in connection with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said Certificate of Insurance/Evidence of Property Insurance, except where any Additional Insured (s) or Loss Payee(s) are named pursuant to the Special Provisions of said Certificate of Insurance/Evidence of Property Insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions and exclusions stated herein.

The Company hereby authorizes Hobbs Group/Kirklin & Co., LLC to issue Certificates of Insurance/Evidence of Property Insurance including any mortgagee, Loss Payee and Additional Insured clauses.

#### SUPPLEMENTARY COVERAGES

The coverages below are policy sublimits. If you purchase additional limits for any of these coverages at a specific location, the Limits of Insurance shown at that location will reflect your total limits, including the Limits of Insurance shown below.

A. The Limits of Insurance shown below are provided for the Coverages listed and apply separately at each of your premises. If there is no separate deductible indicated, the Property Deductible will apply.

\$5,000 Arson Reward  
\$25,000 Fire Department Services Charge  
\$25,000 Fire Protection Device Recharge  
ORDINANCE OR LAW

Full Building Limit as per Statement of Values on file for Coverage A – Coverage for Loss to the Undamaged Portion of the Building  
\$250,000 for Coverage B – Demolition Cost Coverage & Coverage C – Increased Cost of Construction Coverage  
\$5,000 Outdoor Property with a \$500 maximum per item  
\$10,000 Pollutant Clean Up and Removal

B. When Business Income Coverage is included in the Declarations, the following coverages are provided up to the Business Income Limit of Insurance. These are extensions of coverage, not additional Limits of Insurance:

Utility Services (including Overhead Power Transmission Lines)

#### OPTIONAL COVERAGE

A. Guaranteed Replacement Cost – Building Coverage Only

To qualify for Guaranteed Replacement Cost, your building must have an insured value of at least \$90 per Square Foot against all usable square footage (both finished and unfinished spaces included) or have replacement cost appraisal by licensed appraiser on file with Hobbs group/Kirklin & Co., LLC justifying lower value. If replacement cost appraisal is on file, minimum valuation of 100% of Marshall Swift on file with Hobbs group/Kirklin & Co., LLC does not apply.

If location qualifies for Guaranteed Replacement Cost, insurance carrier will pay replacement cost of building, subject to Valuation provision in the policy, regardless of scheduled limit, however, all policy sublimits remain unchanged. In the absence of Guaranteed Replacement Cost valuation the maximum recovery is 100% of scheduled building values at the time of the loss.

FORMS AND ENDORSEMENTS applicable to this Coverage Part and made a part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule, SB 88 01 (11/85).



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
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Atlanta, GA 30326

**THIS ENDORSEMENT CHANGES THE POLICY.**  
**PLEASE READ IT CAREFULLY.**

**SELECT BUSINESS POLICY**  
**SPECIAL COVERAGES FOR FRATERNITIES**

This endorsement modifies insurance provided under the following:

**SELECT BUSINESS POLICY**  
**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

- I. The following is added to **SECTION A. COVERAGE**  
Section A.1.c is amended to add:  
  
Personal Property of Fraternity house residents is excluded.
- II. The following is added to **SECTION A. COVERAGE**  
Section A.1.b. (1) is amended to:  
  
Personal property owned by you and used in your business including, but not limited to, Fine Arts, Accounts Receivable, Valuable Papers, Commercial Articles and Electronic Data Processing Equipment;
- III. The following is amended to **SECTION C. EXCLUSIONS**  
Section C.1. is amended to add:  
  
h. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.
- IV. The following is amended to **SECTION D. LIMITATIONS**  
Section D.4 is deleted and replaced with the following:  
  4. We will not pay more than \$25,000 for loss or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - a. the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - b. the loss or damage is caused by or resulting from thawing of snow, sleet or ice on the building structure.
- IV. The following is added to **SECTION E. ADDITIONAL COVERAGES:**
  7. Arson Reward

We will pay, up to the limit listed in the Declarations for this Additional Coverage, a reward to any individual(s) who provided information leading to the arrest of the person(s) who committed an arson, which damaged your Covered Property.

The policy deductible does not apply to this Additional Coverage. This Additional Coverage does not apply in those states that do not consider arson rewards a matter of insurance, and thereby disallow them as part of insurance policies.

- V. The following is amended of **SECTION F. COVERAGE EXTENSIONS**  
Section F. Coverage Extensions, Paragraph 2 is deleted and replaced with;

**2. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your trees, shrubs and plants, piers, wharves, docks or retaining walls (not attached to buildings), including debris removal expense.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

- VI. The following is added to **SECTION J. DEFINITIONS**

3. "Location" includes any single or multiple structures at the same address or different addresses as long as they are all owned by the same entity or individual.

This endorsement also modifies insurance provided under the following:

**SELECT BUSINESS POLICY CONDITIONS**

- I. The following is amended to **Section J. Vacancy**  
Section J.1.b. is deleted and replaced with the following:  
"It is understood and agreed that any insured building under renovation shall mean that the insured has contractually secured the services of a qualified contractor or contractors to perform work consisting of remodeling (including but not limited to carpentry, masonry, painting, plumbing, wiring, heating and cooling), improvements, redecorating, or other work performed on the building structure; such renovation shall not include additions to the structure such as room additions or additional stories. Said under renovation shall mean the time frame between the contract's specified job start and job completion dates during which the contractor(s) is (are) in process of performing the work specified by contract; during said time frame the building shall not be considered vacant."
- II. The following is added to **Section J. Vacancy**
- c. Buildings which are idle over school breaks or holidays are not considered to be vacant. However, if a premise is vacated at the start of a school break and is not reoccupied at the end of the school break, the 60 consecutive day provision in Condition II below begins on the first day of the start of the break.
  - d. The Vacancy Provision does not apply to buildings that meet the definition of a vacant building in J.1.a. if that building has been charged the vacancy rate thus eliminating the vacancy provision.
  - e. A deductible of \$10,000 applies per location, for each occurrence, to any covered cause of loss, to all vacant buildings.

III. The following amends Section J. Vacancy

Section J 2. is deleted and replaced with the following;

If the building where loss or damage occurs has been vacant for more than 30 consecutive days before that loss or damage occurs:

a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (1) vandalism;
- (2) sprinkler leakage, unless you have protected the system against freezing;
- (3) building glass breakage;
- (4) water damage
- (5) theft; or
- (6) attempted theft

b. With respect to Covered Causes of Loss other than those listed in 2.(a)(1) through 2. (a)(6) above, we will reduce the amount we would otherwise pay for loss or damage by 15%.

If the building where loss or damage occurs has been vacant for more than 30 consecutive days before that loss or damage occurs or if the location has been properly reported as vacant resulting in the charging of the appropriate vacancy rate, a deductible of \$10,000 will apply to any loss or damage by any cause except the following;

- a. as provided in form CM7662 attached to this policy
- b. as provided in form CM7661 attached to this policy
- c. as provided by the Hurricane Deductible form attached to this policy

III. Under Section K. Valuation, 2.g is deleted in its entirety.

IV. The following is added to Section K. Valuation

4. If Guaranteed Replacement Cost option is chosen by an insured location as the method of valuation For building coverage we will determine the value of the Covered Property in the event of loss or damage as follows:
  - a. At Guaranteed Replacement Cost (without deduction for depreciation) as of the time of loss or damage except as provided in b. through d. below:

- b. We will not pay 1 a Guaranteed Replacement Cost basis for any loss or damage:
  - (1) until the damage is actually repaired or replaced, and
  - (2) unless the repairs or replacement are made:
    - (a) as soon as reasonably possible after the loss or damage; or
    - (b) if claim was initially made on an actual cash basis, as soon as reasonably possible after you notify us, within 180 days after the loss or damage, or your intent to make a claim on a Guaranteed Replacement Cost basis.
- c. We will not pay more for loss or damage on a Guaranteed Replacement Cost basis than the Least of (1), or (2) subject to d. below:
  - (1) The cost to replace, on the same premises, the damaged building with a building of:
    - (a) comparable material and quality and size; and
    - (b) used for the same purpose;or
  - (2) The amount you actually spend that is necessary to repair or replace the damaged property.
- d. The cost of repair or replacement does not include any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

This endorsement also modifies insurance provided under the following:

**SELECT BUSINESS POLICY  
BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM**

- I. The following amends Section D. ADDITIONAL COVERAGES  
Section D.2.b.(2). Is deleted and replaced with;
  - (2) 90 consecutive days after the date determined in b (1).

This endorsement also modifies insurance provided under the following:

**ACCOUNTS RECEIVABLE COVERAGE FORM**

- I. The following amends Section A. COVERAGE  
Section A.2.a. is deleted entirely.

This endorsement also modifies insurance provided under the following:

**VALUABLE PAPERS AND RECORDS COVERAGE FORM**

- I. The following amends Section A. COVERAGE  
Section A.2.c. is deleted entirely.

This endorsement also modifies insurance provided under the following:

The following amends Select Business Policy Conditions (SB86-01 Edition 11-97) page 7 of 7 -- under Loss Conditions k.2.h. (2): amending "within 12 months" to "within 180 Days."

It is understood that Backup of Sewers or Drains is a Covered Cause of Loss and the \$2,500 All other deductible applies.



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### SELECT BUSINESS POLICY CONDITIONS

This Coverage Part is subject to the following conditions

#### GENERAL CONDITIONS

##### A. Concealment, Misrepresentation Or Fraud

This Coverage Part is void in any case of fraud by you at any time relating to this insurance. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact at concerning:

1. this Coverage Part;
2. the Covered Property;
3. your interest in the Covered Property; or
4. a claim under this Coverage Part.

##### B. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

##### C. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. there has been full compliance with all of the terms of this Coverage Part; and
2. the action is brought within 2 years after the date on which the direct physical loss or damage occurred.

##### D. Liberalization

If we adopt any revision that would broaden the coverage under this Coverage Part with-

out additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

##### E. No Benefit To Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

##### F. Policy Period, Coverage Territory

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. during the policy period shown in the Declarations; and
  - b. within the Coverage Territory.
2. The Coverage Territory is:
  - a. the United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

##### G. Mortgageholders

1. The term "mortgageholder" includes trustees.
2. We will pay for covered loss of or damage to building or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
3. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

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4. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- a. pays any premium due under this Coverage Part if you have failed to do so;
- b. submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- c. has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

5. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- a. the mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- b. the mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired. At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

6. If we cancel this policy, we will give written notice to the mortgageholder at least:

- a. 10 days before the effective date of cancellation if we cancel for your nonpayment or premium; or
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

7. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

#### LOSS CONDITIONS

##### A. Abandonment

There can be no abandonment of any property to us.

##### B. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of physical loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and the amount of physical loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1. pay its chosen appraiser; and
- 2. bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

##### C. Duties In The Event Of Loss Or Damage

1. You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when, and where the loss or damage occurred.

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pay more than the actual amount of the loss or damage

#### E. Loss Payment

d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such loss, for consideration in the settlement of the claim. However we will not pay for any subsequent loss or damage resulting from a Cause of Loss that is not a covered Cause of Loss. This will not increase the Limit of Insurance. Also, if feasible, set damaged property aside and in the best possible order, for examination.

e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

f. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

g. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

h. Cooperate with us in the investigation or settlement of the claim.

2. We may examine any Insured under oath while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this insurance or claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

#### D. Insurance Under Two Or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not  
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1. In the event of direct physical loss or damage covered by this Coverage Part, at our option and subject to any applicable Deductible provision, or Loss Condition, we will either:

a. pay the value of lost or damaged property, as specified in K. Valuation below;

b. pay the cost of repairing or replacing the lost or damaged property, subject to 2. below;

c. take all or any part of the property at an agreed or appraised value; or

d. repair, rebuild or replace the property with other property of like kind and quality subject to 2. below.

2. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property

3. The amount of Business Income loss will be determined based on:

a. the Net Income of the business before the direct physical loss or damage occurred;

b. the likely Net Income of the business if no physical loss or damage had occurred but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;

c. the operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and

d. other relevant sources of information, including:  
(1) your financial records and ac-

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counting procedures;

(2) bills, invoices and other vouchers;  
and

(3) deeds, liens, or contracts

## 4. The amount of Extra Expense will be determined based on:

a. All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:

(1) the salvage value that remains of any property bought for temporary use during the "period of restoration," once "operations" are resumed; and

(2) any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

b. Necessary expenses that reduce the Business Income loss that otherwise would have been incurred

## 5. We will give notice of our intentions within 30 days after we receive the sworn statement of loss

## 6. We will not pay you more than your insurable interest in the Covered Property

## 7. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their insurable interest in the Covered Property

## 8. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

## 9. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with

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all of the terms of this Coverage Part and;

a. we have reached agreement with you on the amount of loss; or

b. an appraisal award has been made.

## F. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis

2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance or more than the actual amount of loss or damage.

## G. Recovered Property

1. If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

2. If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may, at your own expense:

a. stamp "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or

b. remove the the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise or its containers to comply with the law

SB 86 01  
(Ed. 11 97)**H. Resumption Of Operations****1. We will reduce the amount of your:**

a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations," in whole or in part by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.

b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

**2. If you do not resume "operations," or do not resume "operations" as quickly as possible, we will pay losses based on the length of time it would have taken to resume "operations" as quickly as possible.****I. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

**1. Prior to a loss to your Covered Property or Covered Income.****2. After a loss to your Covered Property or Covered Income only if, at the time of loss, that party is one of the following:**

a. someone insured by this insurance;

b. a business firm:

(1) owned or controlled by you; or

(2) that owns or controls you; or

c. your tenant.

This will not restrict your insurance

**J. Vacancy****1. Description of Terms**

a. As used in the Vacancy Condition, the term building and the term vacant have the following meaning:

(1) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means that unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations

(2) When this policy is issued to the owner of a building, building means the entire building. Such building is vacant when 70% or more of its square footage:

(a) is not rented; or

(b) is not used to conduct customary operations

b. Buildings under construction or renovation are not considered vacant.

**2. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(1) vandalism;

(2) sprinkler leakage, unless you have protected the system against freezing;

(3) building glass breakage;

(4) water damage;

(5) theft; or

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(6) attempted theft

b. With respect to Covered Causes of Loss other than those listed in 2. (a)(1) through 2. (a)(6) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

#### K. Valuation

1. If actual cash value is indicated in the Declarations as the method of valuation we will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage except as provided in b. through h. below.

b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

c. Finished "stock" you have manufactured at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

(1) Actual cash value of the loss or damage property if you make repairs promptly.

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) divide the amount determined in (a) above by the number of days from the installation of Improvements to the expiration of the lease.

(3) Nothing if others pay for repairs for replacement.

f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(1) blank materials for reproducing the records; and

(2) labor to transcribe or copy the records when there is a duplicate

g. Exhibitions and displays at your cost.

h. Patterns, molds, models, and dies at replacement cost if actually replaced, otherwise at actual cash value.

2. If replacement cost is indicated in the Declarations as the method of valuation we will determine the value of Covered Property in the event of loss or damage as follows:

a. At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b. through j. below:

b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

c. Finished "stock" you have manufactured, at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

(1) Replacement cost of the loss or

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damaged property if you make repairs promptly

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease;

(c) if your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(1) blank materials for reproducing the records; and

(2) labor to transcribe or copy the records when there is a duplicate.

g. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac at actual cash value

h. We will not pay on a replacement cost basis for any loss or damage:

(1) until the lost or damaged property is actually repaired or replaced; and

(2) unless the repairs or replacement are made:

(a) as soon as reasonably possible after the loss or damage; or

(b) if claim was initially made on an actual cash basis, as soon as reasonably possible after you notify us, within 12 months after the loss or damage, of your intent to make claim on a replacement cost basis

i. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3) subject to k. below:

(1) the Limit of Insurance applicable to the lost or damaged property;

(2) the cost to replace, on the same premises, the lost or damaged property with other property:

(a) of comparable material and quality; and

(b) used for the same purpose; or

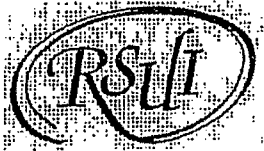
(3) the amount you actually spend that is necessary to repair or replace the lost or damaged property.

j. The cost of repair or replacement does not include any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### L. Errors In Description

We will pay for loss covered by this policy if such loss is otherwise not payable solely because of any unintentional error in describing a location insured under this policy

You agree to give us prompt notice of any such error when discovered.



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**SELECT BUSINESS POLICY  
BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION J - DEFINITIONS.

**A. COVERAGE**

We will pay for direct physical loss of or damage to Covered Property shown in the Declarations caused by or resulting from any Covered Cause of Loss

**1. Covered Property**

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1, and limited in A.2, Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) completed additions;
- (2) fixtures, including outdoor fixtures and signs;
- (3) permanently installed:
  - (a) machinery;
  - (b) equipment; and
  - (c) foundations of machinery, tanks and their component parts, including all connections thereto which are below the undersurface of the lower basement floor, or

where there is no basement, below the surface of the ground

- (4) personal property owned by you that is used to maintain or service the building or structure or its premises, including but not limited to:

- (a) fire extinguishing equipment;
- (b) outdoor furniture;
- (c) floor coverings; and
- (d) appliances used for refrigerating, ventilating, cooking, dish washing or laundering;

- (5) If not covered by other insurance, additions under construction, alterations and repairs to the building or structure;

b. Your Business Personal Property as shown in the Declarations, including:

- (1) personal property owned by you and used in your business;
- (2) labor, materials or services furnished or arranged by you on personal property of others;

(3) your use interest as tenant in improvements and Betterments made a part of the building or structure you occupy but do not own;

(4) leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others; and

(5) signs, including signs attached to buildings, provided there is no coverage for the sign under the Building Covered Property.

c. Personal Property of Others that is in your care, custody or control as shown on the declarations

However, our payment for loss of, or damage to Personal Property of Others will only be for the account of the owner of the property

## 2. Property Not Covered

Covered Property does not include:

- a. accounts, bills, currency, deeds, evidences of debt, money, notes or securities;
- b. animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. automobiles held for sale;
- d. bridges;
- e. contraband, or property in the course of illegal transportation or trade;
- f. foundations of buildings, structures, or boilers if their foundations are below:
  - (1) the lowest basement floor; or
  - (2) the surface of the ground, if there is no basement;
- g. land (including land on which the property is located), water (including groundwater), growing crops or lawns;

h. personal property while waterborne (other than while on regular ferries or railroad car floats);

i. underground pipes, flues or drains except as provided under A. 1 a (3)(c);

j. vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) are licensed for use on public roads; or

(2) are operated principally away from the described premises

This paragraph does not apply to:

(1) vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(2) vehicles or self-propelled machines, other than autos, you hold for sale; or

(3) rowboats or canoes out of water at the described premises;

k. the following property while outside of buildings:

(1) grain, hay, straw or other crops;

(2) trees, shrubs or plants, piers, wharves, docks or retaining walls, all except as provided in the Coverage Extensions.

l. the cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media.

## B. COVERED CAUSES OF LOSS

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section C. Exclusions; or

2. Limited in Section D. Limitations;

that follow

### C. EXCLUSIONS

- 1 We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) regulating construction; use or repair of any property; or
- (2) requiring the tearing down of any property including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) the increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a direct physical loss or damage to that property.

#### b. Earth Movement

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if earth movement results in fire, theft, or explosion, we will pay for the loss or damage caused by that fire or explosion.
- (2) Volcanic eruption, explosion or effusion. But, if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) airborne volcanic blast or airborne shockwaves;
- (b) ash, dust or particulate matter; or
- (c) lava flow

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion does not apply to Covered Personal Property in due course of transit.

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority. But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

#### d. Utility Services

The failure of power or other utility service supplied to the described premises however caused, if the failure occurs away from the described premises.

But if the failure of power or other utility services results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss.

#### e. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused

But if nuclear reaction or radiation or radioactive contamination results in fire we will pay for that loss or damage caused by the fire.

**f. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
- (2) Mudslide or mudflow  
But if Water, as described in g (1) and g (2) above results in fire, explosion, theft or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion, theft or sprinkler leakage.

This exclusion does not apply to Covered Personal Property in due course of transit.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires  
But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.

**d. (1) Wear and tear;**

- (2) rust, corrosion, fungus, decay, deterioration, spoilage, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) smog;
- (4) settling, cracking, shrinking or expansion;
- (5) nesting or infestation or discharge or release of waste products or secretions by insect, birds, rodents or other animals.
- (6) mechanical breakdown, including rupture or bursting caused by centrifugal force; or

**(7) the following causes of loss to personal property;**

- (a) dampness or dryness of atmosphere;
- (b) cold or heat;
- (c) marring or scratching.

But if an excluded cause of loss that is listed in 2.d (1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control But if explosion of steam boilers, steam pipes, steam engines, or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass

f. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) you do your best to maintain heat in the building or structure; or
- (2) you drain the equipment and shut off the supply if the heat is not maintained

g. Dishonest or criminal act by you, any of your partners, employees (including leased employees) directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) acting alone or in collusion with others; or
- (2) whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered

h. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense

i. Rain, snow, ice or sleet to personal property in the open.

j. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss

k. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release

or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

3. We will not pay for loss or damage caused by or resulting from any of the following 3a. through 3c. But if an excluded Cause of Loss that is listed in 3a. through 3c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss

a. Weather conditions But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1 above to produce the loss or damage

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body

c. Faulty, inadequate or defective:

- (1) planning, zoning, development, surveying, siting;
- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) materials used in repair, construction, renovation or remodeling; or

(4) maintenance;

of part or all of any property on or off the described premises

#### D. LIMITATIONS

1. We will pay for direct physical loss or damage to Covered Personal Property which is in due course of transit at your risk if the Covered Personal Property is:

a. in the custody of a carrier or bailee for hire; or

b. on vehicles you own or operate; but only up to the Transit Limit of Insurance shown in the Declarations and subject to the Transit deductible shown in the Declarations.

2. We will not pay for loss or damage to any of the following types of property if the loss or damage occurs at an unnamed location or while in transit:

- a. Musical Instruments
- b. Contractors' Equipment, including Cranes

This limitation does not apply to musical instruments or contractors equipment you manufacture, process or hold for sale.

3. We will not pay for loss or damage to:

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion
- c. Property that is missing, where the only evidence of the loss or damage is the shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- d. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions

4. We will not pay more than \$10,000 for loss or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- a. the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- b. the loss or damage is caused by or results from thawing of snow, sleet or ice on the building structure.

5. We will only pay for loss of or damage to animals if the loss or damage is caused by any of the "specified causes of loss" or building glass breakage, and then only if they are killed or their destruction is made necessary.

6. The special limit shown for each category, a. through c., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- a. \$2,500 for furs, fur garments and garments trimmed with fur
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item
- c. \$250 for stamps, tickets (including lottery tickets held for sale) and letters of credit

7. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder, or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- a. results in discharge of any substance from any automatic fire protection system; or
- b. is directly caused by freezing

**E. ADDITIONAL COVERAGES****1. Collapse**

The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in 1.a through 1.e. below.

a. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this Coverage Form, if the collapse is caused by one or more of the following:

- (1) the "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Form;
- (2) hidden decay;
- (3) hidden insect or vermin damage;
- (4) weight of people or personal property;
- (5) weight of rain that collects on a roof;
- (6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 1.a(1) through 1.a.(6), we will pay for the loss or damage even if the use of defective material or methods, in construction, remodeling or renovation, contributed to the collapse

b. If the direct physical loss or damage does not involve collapse of a building we will pay for loss or damage to Covered Property caused by the collapse of personal property only if:

- (1) the personal property which collapses is inside a building; and

- (2) the collapse was caused by a cause of loss listed in 1.a (1) through 1.a.(6) above

c. With respect to the following property:

- (1) outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- (2) awnings, gutters and downspouts;
- (3) yard fixtures;
- (4) outdoor swimming pools;
- (5) fences;
- (6) piers, wharves, and docks;
- (7) beach or diving platforms or appurtenances;
- (8) retaining walls; and
- (9) walks, roadways and other paved surfaces;

If the collapse is caused by a Cause of Loss listed in 1 a (1) through 1 a.(6), we will pay for loss or damage to that property only if:

- (1) such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
- (2) the property is Covered Property under this Coverage Form.

d. Collapse does not include settling, cracking, shrinkage, bulging or expansion.

e. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Form.

No Deductible applies to this Additional Coverage.

**2. Debris Removal**

a. We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of

Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) the date of direct physical loss or damage; or
- (2) the end of the policy period.

b. The most we will pay under this Additional Coverage is 25% of:

- (1) the amount we pay for the direct physical loss of or damage to Covered Property; plus
- (2) the deductible in this Coverage Form applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

c. This Additional Coverage does not apply to the cost to:

- (1) extract "pollutants" from land or water; or
- (2) remove, restore or replace polluted land or water.

### 3. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to the limit specified in the Declarations for this Additional Coverage for your liability for fire department service charges:

- a. assumed by contract or agreement prior to loss; or
- b. required by local ordinance.

No Deductible applies to this Additional Coverage

### 4. Fire Protection Device Recharge

We will pay, up to the limit listed in the Declarations for this Additional Coverage, to recharge or refill your fire protective devices that are permanently installed in buildings at the described premises.

This Additional Coverage only applies when such devices have been discharged while being used to combat a covered fire.

### 5. Loss Data Preparation

We will pay, up to the limit listed in the Declarations for this Additional Coverage, for reasonable costs you incur in preparing loss data required by policy conditions after a loss covered by this Coverage Part. This includes the cost of taking inventory, making appraisals and preparing other data to determine the extent of your loss. This does not include public adjusters fees.

### 6. Pollutant Clean Up and Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge or dispersal of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- a. the date of direct physical loss or damage; or
- b. the end of the policy period.

The most we will pay for each location under this Additional Coverage is stated in the Declarations for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this Policy

No Deductible applies to this Additional Coverage

**F. COVERAGE EXTENSIONS**

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises

**1. Newly Acquired or Constructed Property**

a. You may extend the Insurance that applies to Building to apply to:

(1) your new buildings while being built on the described premises;

(2) buildings you acquire at locations, other than the described premises, intended for:

(a) similar use as the building described in the Declaration;  
or

(b) use as a warehouse.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations

b. You may extend the Insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

c. Insurance under this Extension for each newly acquired or constructed property will end when any of the following occurs:

(1) this Coverage Part expires;

(2) 90 days expire after you acquire or begin to construct the property; or

(3) you report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property

d. If the coverage provided by this extension has expired due to Item (c) above, the Limit of Insurance shown in the Declarations for "At Any Other Location" will apply.

**2. Outdoor Property**

You may extend the Insurance provided by this Coverage Form to apply to your trees, shrubs and plants, piers, wharves, docks or retaining walls (not attached to buildings), including debris removal expense, caused by or resulting from any of the following causes of loss:

a. fire;

b. lightning;

c. explosion;

d. riot or Civil Commotion; or

e. aircraft.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

**3. Personal Effects**

You may extend the Insurance that applies to Your Business Personal Property to apply to personal effects owned by you, your officers, your partners or your employees.

The most we will pay for loss or damage under this Extension is stated in the Declarations for this Extension per each described premises. Our payment for loss or damage to personal property of others will only be for the account of the owner of the property.

No Deductible applies to this Coverage Extension.

#### 4. Water Damage, Other Liquids, Powder or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

#### G. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The limits applicable to the Coverage Extensions and all of the Additional Coverages are all in addition to the Limits of Insurance except for Collapse and Debris Removal. Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. collapse;
2. debris removal; but if:
  - a. the sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
  - b. the debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;

we will pay up to the limit shown for Debris Removal on the Declarations for each location in any one occurrence under the Debris Removal Additional Coverage.

#### H. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. The Deductible clause does not apply to Business Income.

#### I. OPTIONAL COVERAGES

##### 1. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) the Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times;
  - (2) the percentage of annual increase shown in the Declarations expressed as a decimal (example 8% is .08), times;
  - 3) the number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365

##### Example:

If: The applicable Limit of Insurance is	\$100,000
and the annual percentage increase is	8%
The number of days since the beginning of the policy year (or last policy change) is	146
The amount of increase is:	
\$100,000 X .08	
X 146 ÷ 365 =	\$3,200

##### 2. Ordinance or Law

- a. Each of the Coverages - Coverage A, Coverage B and Coverage C - applies only if that Coverage(s) is chosen by entry in the Declarations and then only with respect to the Building property identified for that Coverage(s) in the Declarations

b. We will not pay under this Optional Coverage for the costs associated with the enforcement of any ordinance or law which requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"

c. Coverage A - Coverage for Loss to the Undamaged Portion of the Building

If there is a direct physical loss or damage from a Covered Cause of Loss to a covered Building property, we will pay under Coverage A for the loss in value of the undamaged portion of the building which is a consequence of enforcement of any ordinance or law that:

- (1) requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (2) regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (3) is in force at the time of the Covered Cause of Loss

d. Coverage B - Demolition Cost Coverage

If there is a direct physical loss or damage from a Covered Cause of Loss to covered Building property, we will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law

If attached, the COINSURANCE Additional Condition Endorsement does not apply to Demolition Cost Coverage

e. Coverage C - Increased Cost of Construction Coverage

(1) If there is a direct physical loss or damage from a Covered Cause of Loss to the covered Building property, we will pay for the increased cost to:

- (a) repair or reconstruct damaged portions of that Building property; and/or
- (b) reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required

When the increased cost is a consequence of enforcement of building, zoning or land use ordinance or law

However:

- (a) This coverage applies only if the restored or remodeled property is intended for similar occupancy to the occupancy prior to the loss or damage unless such occupancy is not permitted by zoning or land use ordinance or law.
- (b) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

If attached, the COINSURANCE Additional Condition Endorsement, does not apply to Increased Cost of Construction Coverage.

f. Loss Payment

(1) Coverage A

- (a) If the replacement cost valuation applies and the property is repaired or replaced on the same or another premises we will not pay more than the lesser of:
  - (i) the amount you actually spend to repair, rebuild or reconstruct the building, but not more than the amount it would cost to restore the building on the same

premises and to the same height, floor area, style and comparable quality of the original property insured; or

(ii) the Limit of Insurance shown in the Declarations as applicable to the covered building property.

(b) If the replacement cost valuation applies and the property is not repaired or replaced, or if the replacement cost valuation does not apply we will not pay more than the lesser of:

(i) the actual cash value of the building at the time of loss; or

(ii) the Limit of Insurance shown in the Declarations as applicable to the covered building property.

## (2) Coverage B

We will not pay more than the lesser of the following

(a) the amount you actually spend to demolish and clear the site of the described premise; or

(b) the applicable Limit of Insurance shown for Coverage B in the Declarations

## (3) Coverage C

(a) We will not pay under Coverage C:

(i) until the property is actually repaired or replaced at the same or another premises; and

(ii) unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend the period in writing during the two years

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premise, the most we will pay under Coverage C is the lesser of;

(i) the increased cost of construction at the same premises; or

(ii) the applicable Limit of Insurance shown for Coverage C in the Declarations

(c) If the ordinance or law requires relocation to another premises, the most we will pay under Coverage C is the lesser of;

(i) the increased cost of construction at the new premises; or

(ii) the applicable Limit of Insurance shown for Coverage C in the Declarations.

g. Under this Optional Coverage we will not pay for loss due to any ordinance or law that:

(1) you were required to comply with before the loss, even if the building was undamaged; and

(2) you failed to comply with.

## 3. Utility Services

a We will pay for direct physical loss or damage to Covered Property described in the Declarations by the interruption of any of the following

services to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the following property, not on the described premises:

(1) Water Supply Services, meaning the following types of property supplying water to the described premises:

- (a) pumping stations; and
- (b) water mains.

(2) Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:

- (a) communication transmission lines, including optic fiber transmission lines;
- (b) coaxial cables; and
- (c) microwave radio relays except satellites

(3) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

- (a) utility generating plants;
- (b) switching stations;
- (c) substations;
- (d) transformers; and
- (e) transmission lines.

b. The Utility Services Limit of Insurance as shown on the Declarations is part of, not in addition to, the Limit of Insurance stated in the Declarations, as applicable to the Covered Property.

#### J. DEFINITIONS

1. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

2. "Stock" means merchandise held in storage or for sale, raw materials and in process or finished goods, including supplies used in their packing or shipping.

3. "Specified Causes of Loss" means the following: Fire; lightning; explosion; wind-storm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sink-hole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

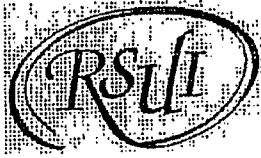
a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) the cost of filling sinkholes; or
- (2) sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) personal property in the open; or
- (2) the interior of a building or structure, or property inside a building or structure unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.



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### SELECT BUSINESS POLICY BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights and duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION H - DEFINITIONS

#### A. COVERAGE

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property, including personal property in the open (or in a vehicle) within 1000 feet, of the premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss

If you are a tenant, your premises is the portion of the building which you rent, lease or occupy, including all routes within the building to gain access to the described premises and your personal property in the open (or in a vehicle) within 1000 feet your premises.

##### 1. Business Income

Business Income means the:

- a Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b continuing normal operating expenses incurred, including payroll

#### B. COVERED CAUSES OF LOSS

Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:

- 1. excluded in Section C. Exclusions, of the Select Business Policy Building and Personal Property Coverage Form;
- 2. limited in Section D. Limitations of the Select Business Policy Building and Personal Property Coverage Form; or
- 3. excluded in Section C. Special Exclusions, below.

#### C. SPECIAL EXCLUSIONS

We will not pay for:

- 1. Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of the covered building.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- 2. Any loss caused by or resulting from:
  - a. damage or destruction of finished "stock"; or
  - b. the time required to reproduce finished "stock".

This exclusion does not apply to Extra Expense.

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3 Any increase of loss caused by or resulting from:

a. delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

b. suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations" we will cover such loss that affects your Business Income during the "period of restoration".

4. Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

5. Any other consequential loss

6. Any loss caused by or resulting from damage or destruction of property in transit

**D. ADDITIONAL COVERAGES**

**1. Civil Authority**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss. The coverage will apply for a period of up to three consecutive weeks from the date of that action.

**2. Extended Business Income**

We will pay for the actual loss of Business Income you incur during the period that:

a. begins on the date property (except finished "stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and

b. ends on the earlier of:

(1) the date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or

(2) 60 consecutive days after the date determined in b (1) above. However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premise are located

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**3. Extra Expense**

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss

a. We will pay any Extra Expense to avoid or minimize the suspension of business and to continue "operations":

(1) at the described premises; or

(2) at the replacement premises or at temporary locations, including:

(a) relocation expenses; and

(b) costs to equip and operate the replacement or temporary locations.

b. We will pay any Extra Expense to minimize the suspension of business if you cannot continue "operations"

c. We will pay any Extra Expense to:

(1) repair or replace any property; or

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- (2) research, replace or restore the lost information or damaged valuable papers and records; to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

#### E. COVERAGE EXTENSION

##### 1. Newly Acquired Locations

- a. You may extend your Business Income Coverage to apply to property at any location you acquire other than fairs or exhibits.
- b. The most we will pay, at each location, for loss under this Extension is the limit shown in the Declarations for this Coverage Extension.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) this policy expires;
- (2) 90 days expire after you acquire or begin to construct the property; or
- (3) you report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

##### 2. Property At Any Other Location

- a. You may extend your Business Income Coverage to apply to property at any location other than described premises or newly acquired locations.
- b. The most we pay, at each location, for loss under this extension is the limit shown on the Declarations for this Coverage Extension.

#### F. LIMITS OF INSURANCE

The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The limits applicable to the Coverage Extensions are in addition to the Limit of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Extra Expense;
2. Civil Authority; or
3. Extended Business Income

#### G. OPTIONAL COVERAGES

##### 1. Dependent Property Business Income

- a. When indicated in the Declarations, we will pay for the actual loss of business income you sustain due to necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to "dependent property" caused by or resulting from any Covered Cause of Loss.

- b. We will pay no more than the Limit of Insurance for Business Income or the limit in the Declarations for this Optional coverage, whichever is less.

- c. The following is added to Select Business Policy Conditions, Loss Condition G. Resumption of Operations:

2. We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

- a. source of materials; or
- b. outlet for your products.

- d. The following is added to the DEFINITIONS section:

1. "Dependent Property" means property operated by others whom you depend on to:

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- a. deliver materials or services to you, or to others for your account. Services does not mean water, communication or power supply services;
- b. accept your products or services;
- c. manufacture products for delivery to your customers under contract of sale; or
- d. attract customers to your business

2. "Period of Restoration" with respect to "dependent property" is the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the date when the property at the premises of the "dependent property" should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- a. regulates the construction, use or repair, or requires the tearing down of any property; or
- b. requires any Insured or others to test for monitor, clean up, remove, contain, treat detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration"

2. Ordinance or Law - Increased Period of Restoration

- a. When Indicated in the Declarations that this coverage applies, if a Covered Cause of Loss occurs to property at the premises described in the Declaration, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of suspension of "operations" caused by or resulting from the enforcement of any ordinance or law that:

(1) regulates the construction or repair of any property;

(2) requires that tearing down of parts of any property not damaged by a Covered cause of Loss; and

(3) is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of any ordinance or law which requires any Insured or other to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of "pollutants".

b. The PERIOD OF RESTORATION definition is replaced by the following:

3. "Period of Restoration" means the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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"Period of Restoration" includes any increased period required to repair or reconstruct the property to comply with the minimum standards of any ordinance or law, in force at the time of loss, that regulates the construction or repair or requires the tearing down of any property.

The expiration date of this policy will not cut short the "period of restoration".

### 3. Unfinished Stock in Transit

When indicated in the Declarations page, we will pay for the loss of business income you sustain due to direct physical loss or damage by a Covered Cause of Loss to unfinished "stock" while in transit.

The most we will pay is the Limit of Insurance for Unfinished Stock in Transit shown on the Declarations.

### 4. Utility Services

a. When indicated in the Declarations that this Coverage applies, we will pay for loss of Business Income or Extra Expense, caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the property described below, if the property is located outside of a covered building described in the Declarations:

(1) Water Supply Services, meaning the following types of property supplying water to the described premises:

- (a) pumping stations; and
- (b) water mains.

(2) Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:

(a) communication transmission lines, including optic fiber transmission lines;

(b) coaxial cables; and

(c) microwave radio relays except satellites.

(3) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

(a) utility generating plants;

(b) switching stations;

(c) substations;

(d) transformers; and

(e) transmission lines.

b. The Utility Services Limit of Insurance as shown in the Declarations is part of, not in addition to, the Limit of Insurance stated in the Declarations, as applicable to the Business Income

### H. DEFINITIONS

1. "Operations" means your business activities occurring at the described premises.

2. "Period of Restoration" means the period of time that:

a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

b. ends on earlier of:

(1) the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) the date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that;

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- a. regulates the construction, use or repair, or requires the tearing down of any property; or
- b. requires any insured or others to test for monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

- 3. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 4. "Stock" means merchandise held in storage or for sale, raw material and in process or finished goods, including supplies used in their packing or shipping.



## BUSINESS ELECTRONIC SYSTEMS AND TELECOMMUNICATIONS FORMS

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F DEFINITIONS.

### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

#### 1. Covered Property, as used in this Coverage Form, means:

- a. Electronic Equipment - meaning your Electronic Data Processing, Information Technology Hardware, and Telecommunications Equipment, including their component parts;
- b. Data, Programs and Media
  - (1) Data is information which has been converted to a form usable in Data Processing Equipment. Data includes Computer Programs and Instructions;
  - (2) Media is the material on which Data is recorded; for example, magnetic disks and tapes.
- c. Property of Others - similar property of others in your care, custody or control, and for which you are legally responsible.

#### 2. Property Not Covered

Covered Property does not include:

- a. Property you loan, rent or lease to others while it is away from your premises;
- b. Data or Media which cannot be replaced with other of the same kind or quality, unless it is specifically described and scheduled with a separate Limit of Insurance in the Declarations.
- c. Satellites, microwave towers and dishes, earth stations, telephone switching stations or similar property.
- d. Accounts, bills, currency, securities, evidence of debt, valuable papers, abstracts, records, deeds, manuscripts or other documents, unless converted to Data, and then only in that form.
- e. Your stock in trade.
- f. Contraband, or property in the course of illegal transportation or trade.

#### 3. Covered Causes of Loss

Covered Causes of Loss means Risks Of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

#### 4. Additional Coverages

##### a. Extra Expense

(1) We will pay the actual and necessary Extra Expense you sustain from a Covered Cause of Loss, due to direct physical loss of or damage to:

(a) Covered Property at your premises or in transit, within the Coverage Territory;

(b) the building in which the Covered Property is located, provided the building is damaged to an extent which prevents access to the Covered Property;

(c) the air conditioning, voltage regulator, line conditioner or uninterruptable power supply systems that specifically service your data processing operation;

(d) the electrical or telecommunication system that specifically services your data processing operation, provided the damage to the system occurs inside, or within 100 feet of, the building housing your data processing operation.

(e) a building adjacent to a scheduled location, when access to the scheduled location is prohibited by civil authority. Coverage is limited to no more than two (2) weeks.

(2) Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property:

(a) To avoid or minimize the suspension of business and to continue "operations":

(i) at the described premises; or

(ii) at replacement premises or at temporary locations, including:

Relocation expenses; and

Costs to equip and operate the replacement or temporary locations

(b) To minimize the suspension of business if you cannot continue "operations"; or

(c) (i) to repair or replace any property; or

(ii) to research, replace or restore the lost information on damaged valuable papers and records;

but only to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage.

(3) The most we will pay for "loss" in any one occurrence under this Additional Coverage is the applicable Extra Expense Limit of Insurance shown in the Declarations.

##### (b) Newly Acquired Electronic Equipment

We will pay for "loss" to Newly Acquired Electronic Equipment at each location scheduled in the Declarations, provided the value of the equipment is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute the additional premium due from the date you acquire the equipment.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is 25% of the highest Limit of Insurance for any location shown in the Declarations, for coverage A.1 a Electronic Equipment, up to a maximum of \$250,000.

**c. Newly Acquired Locations**

We will pay for "loss" to Covered Property at any new location which you acquire, provided the new location is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute any change in your premium from the date you occupy the new location.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**d. Temporary Locations**

We will pay for "loss" to Covered Property while at temporary locations but only for the first 60 days that the property is located there, and not beyond the end of the policy period.

The most we will pay in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**e. Debris Removal**

We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss.

The most we will pay for "loss" at each location under this Additional Coverage is 25% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages up to a maximum of \$100,000.

This Additional Coverage doesn't apply to the cost to:

(1) extract "pollutants" from land or water; or

(2) remove, restore or replace polluted land or water.

**f. Pollutant Clean Up and Removal**

We will pay your necessary expense to extract "pollutants" from land or water at the premises described in the Declarations, if the release, discharge or dispersal of the "pollutants" results from a Covered Cause of Loss to Covered Property that occurs during the policy period. Your expenses will be paid only if they are reported to us within 180 days of the earlier of:

(1) the date of the direct physical loss or damage; or

(2) the end of the policy period.  
The most we will pay for each location under this Additional Coverage is 10% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages, up to a maximum of \$10,000, for the sum of all such expenses for each separate 12 month policy period.

No deductible applies to this Additional Coverage

**g. Cost of Preparing a Statement of Loss**

We will pay the cost of preparing a statement of loss or any other exhibits required in connection with any claim under this Coverage Form

The most we will pay for the cost of preparing a statement of loss or other exhibits under this Additional Coverage is \$1,000.

This Additional Coverage does not include public adjuster's fees.

**h. Duplicate Data**

We will pay for your "loss" of duplicate data stored at locations not scheduled on the Declarations. The most we will pay for "loss" under this Additional Coverage in any one occurrence is 25% of the highest Data, Programs, Media location limit up to a maximum of \$100,000.

**i. Protective Equipment**

We will pay your necessary expenses to:

- (1) Repair or replace (in excess of any amount covered by other insurance);

- (2) Recharge;

Your fire protection equipment that is used exclusively to protect the Covered Property.

We will pay if the damage or discharge is the result of a response to a fire, a false alarm, or another Covered Cause of Loss. But, we won't pay for discharge which occurs during installation, repair or recharge. Nor will we pay for gradual leakage from the system.

The most we will pay under this Additional Coverage in any one occurrence is \$25,000.

These Additional Coverages have separate Limits of Insurance.

**B. EXCLUSIONS**

1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

**c. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**d. Earth Movement**

- (1) Any earth movement such as earthquake, landslide, or earth sinking, rising or shifting. But if loss or damage by fire, theft, or explosion results, we will pay for that resulting "loss."
- (2) Volcanic eruption, explosion or effusion. But if "loss" by fire or volcanic action results, we will pay for that resulting "loss."

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- (a) airborne volcanic blast or airborne shock waves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical "loss" to the described property.

e Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) foundations, walls, floors or paved surfaces;
  - (b) basements, whether paved or not; or
  - (c) doors, windows or other openings.

But if "loss" by fire, explosion, theft or sprinkler leakage results, we will pay for that resulting "loss."

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Dishonest acts by you, your partners, officers or trustees, or your or their agents, or others to whom Covered Property is entrusted;

This exclusion will not apply to acts of destruction by an employee of yours; nor will it apply to bailees for hire (for example, truckers or warehousemen) But we will not pay for theft by your employees.

- b. Delay, loss of market or loss of income;
- c. The enforcement of any law which regulates the construction, repair or demolition of buildings or other structures;
- d. Any change in, or interruption of:

- (1) power supply; or
- (2) telecommunications service  
If the change originates more than 100 feet away from the premises containing the Covered Property (equipment) But, if a loss or damage by fire, explosion or theft results, we will pay for that resulting "loss "

- e. Programming errors or incorrect machine instructions. This does not include loss or damage by computer virus or other malicious software.

In addition to the above, we will not pay for any Extra Expense you incur due to:

- f. Interference by strikers or other persons with repairs to damaged property, or with resumption of normal business "operations";
- g. Mechanical or machinery breakdown of any property not named in the Extra Expense Additional Coverage;

h The suspension, lapse or cancellation of any lease, license or contract beyond the "period of restoration";

i Any other consequential "loss "

3 We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss."

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1 above to produce the "loss."

b. Faulty, inadequate or defective workmanship, repair, material used in repair, upgrading or remodeling of Covered Property.

c Wear and tear, gradual deterioration or obsolescence.

#### C. LIMITS OF INSURANCE

Except for the Additional Coverages b,e,f,g,h and i, the most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The Limits of Insurance for Additional Coverages b,e,f,g,h and i, are stated in those Additional Coverages.

#### D. DEDUCTIBLE

We will pay only the amount of the adjusted "loss" in excess of the applicable Deductible shown in the Declarations, up to the applicable Limit of Insurance.

1. The Breakdown Deductible applies to losses resulting from:

a. Mechanical breakdown, (for example, head crash) of the Covered Property;

b. Short circuit, blow-out or other electric or magnetic disturbance, other than lightning, within electrical equipment, apparatus or devices;

c Any repairing, servicing or processing operation;

d Damage to Data or Media when Electronic Equipment breaks down or malfunctions while Data or Media is being run through the system.

2 The All Other "Loss" Deductible applies to all other losses under this Coverage Form.

#### E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### 1. Coverage Territory

We cover Covered Property in transit to, or from, and at:

a Locations shown in the Declarations;

b. Newly acquired locations and temporary locations as provided in the Additional Coverages for Newly Acquired Locations and Temporary Locations; all while in:

c The United States of America;

d Canada;

but we do not cover property in transit by watercraft to or from Alaska or Hawaii.

##### 2. Valuation

The Valuation General Condition is replaced by the following:

a Electronic Equipment  
We will adjust a "loss" to Electronic Equipment on the basis of "replacement cost." The most we will pay is the lesser of:

(1) the amount necessary to repair the equipment; or

(2) the amount necessary to replace the equipment with:

(a) equipment of the same kind and quality; or

(b) if Equipment cannot be replaced by Equipment of the same kind and quality, new Equipment capable of performing the same functions.

(3) The applicable Limit of Insurance

**b. Data**

Data (including Programs) will be valued at the actual cost of replacing the Data. If it is not replaced or reproduced, we will pay the cost of the blank Media.

**c. Media**

The value of the Media will be the cost to replace the Media with material of the same kind or quality.

**3. Our Options**

If we notify you in writing within thirty (30) days after we receive your signed, sworn statement of loss, we may take all or part of the damaged Covered Property at a value that we will agree upon with you. If we choose, we may also repair the damaged Covered Property, or replace it with similar property.

**F. DEFINITIONS**

1. "Loss" means accidental loss or damage.

2. "Operations" means your business activities occurring at the described premises.

3. "Period of Restoration" means the period of time that:

a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

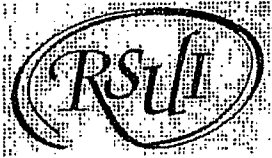
b. ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of Restoration" does not include any increased period required due to the enforcement of any law that regulates the construction, use or repair, or requires the tearing down, of any property.

The expiration date of this policy will not cut short the "period of restoration."

4. "Pollutants" means any solid, liquid gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

5. "Replacement Cost" means the cost to repair or replace the covered property damaged or lost without deduction for depreciation. But, if you choose not to repair or replace the item, we will pay only the actual cash value of the item, or its repair, with proper deduction for depreciation.



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### COMMERCIAL ARTICLES COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F - DEFINITIONS.

#### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

##### 1. Covered Property, as used in this Coverage Form, means:

- a. cameras, projection machines, films and related equipment and accessories;
- b. musical instruments and related equipment and accessories; and
- c. similar property of others that is in your care, custody or control.

##### 2. Property Not Covered

Covered Property does not include contraband or property in the course of illegal transportation or trade.

##### 3. Covered Causes Of Loss

Covered Causes of Loss means Risks of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

##### 4. Additional Coverage - Collapse

We will pay for direct "loss" caused by or resulting from risks of direct physical "loss" involving collapse of all or part of a building or structure caused by one or more of the following:

- a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this Coverage Form;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of people or personal property;
- e. weight of rain that collects on a roof;
- f. use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form.

#### B. EXCLUSIONS

- 1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

##### a. Governmental Action

Seizure or destruction of property by order of governmental authority. But we will pay for "loss" caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

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(Ed. 06 95)

b. Nuclear Hazard

- (1) any weapon employing atomic fission or fusion; or
- (2) nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

c. War And Military Action

- (1) war, including undeclared or civil war;
- (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss
- b. Dishonest or criminal act committed by:
  - (1) you, any of your partners, employees, directors, trustees, or authorized representatives;
  - (2) anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) anyone else to whom the property is entrusted for any purpose.

This exclusion applies whether or not such:

(1) persons are acting alone or in collusion with other persons; or

(2) acts occur during the hours of employment

This exclusion does not apply to:

(1) Covered Property that is entrusted to others who are carriers for hire; or

(2) acts of destruction by your employees. But theft by employees is not covered.

c. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

d. Unauthorized instructions to transfer property to any person or to any place

3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss"

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the "loss."

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

(1) planning, zoning, development, surveying, siting;

(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) materials used in repair, construction, renovation or remodeling; or

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(4) maintenance;

of part or all of any property wherever located

d. Collapse except as provided in the Additional Coverage-Collapse section of this Coverage Form.

e. Wear and tear, any quality in the property that causes it to damage or destroy itself, gradual deterioration; insects, vermin or rodents.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations

#### D. DEDUCTIBLE

We will not pay for "loss" in any one occurrence until the amount of the adjusted "loss" before applying the applicable Limits of Insurance exceeds the Deductible shown in the Declarations. We will then pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance

#### E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### 1. Coverage Territory

We cover property wherever located.

#### 2. Coinsurance

All items that are covered but not individually listed and described must be insured for their total value as to the time of "loss" or you will incur a penalty

The penalty is that we will pay only the proportion of any "loss" to these items that the Limit of Insurance shown in the Declarations for them bears to their total value as of the time of "loss."

#### 3. Additional Acquired Property

If during the policy period you acquire additional property of a type already covered by this form, we will cover such property for up to 30 days, but not beyond the end of the policy period. The most we will pay in a "loss" is the lesser of:

a. 25% of the total Limit of Insurance shown in the Declarations for that type of property; or

b. \$10,000

You will report such property within 30 days from the date acquired and will pay any additional premium due. If you do not report such property, coverage will cease automatically 30 days after the date the property is acquired or at the end of the policy period, whichever occurs first.

#### F. DEFINITIONS

"Loss" means accidental loss or damage



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### COMMERCIAL FINE ARTS COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F - DEFINITIONS.

#### A. COVERAGE

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

1. Covered Property, as used in this Coverage Form, means:

- a. your fine arts; and
- b. fine arts of others that are in your care, custody or control; described in the Declarations.

2. Property Not Covered

Covered Property does not include:

- a. property while on exhibition at fair grounds or on the premises of any national or international exposition; or
- b. contraband, or property in the course of illegal transportation or trade.

3. Covered Causes Of Loss

Covered Causes of Loss means Risks Of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

4. Coverage Extension

Newly Acquired Property

- a. We will cover other objects of art that you acquire during the policy period, but not beyond:
  - (1) 60 days; or
  - (2) the end of the policy period, whichever occurs first.
- b. The most we will pay in a "loss" under this Coverage Extension is the lesser of:

(1) 25% of the scheduled property total Limit of Insurance shown in the Declarations; or

(2) \$25,000

c. You will report such property within 60 days from the date acquired and pay any additional premium that is due. If you do not report that property to us, coverage will end automatically at the earlier of:

(1) 60 days after the date you acquire the property; or

(2) the end of the policy period

The Additional Condition paragraph E 2.b, Coinsurance, does not apply to this Coverage Extension.

#### B. EXCLUSIONS

1. We will not pay for a "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

##### a. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form

##### b. Nuclear Hazard

(1) Any weapon employing atomic fission or fusion; or

(2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

##### c. War and Military Action

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

##### d. Earth Movement

(1) Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting. But if loss or damage by fire, theft, or explosion results, we will pay for that resulting "loss."

(2) Volcanic Eruption, explosion or effusion But if "loss" by fire or volcanic action results, we will pay for that resulting "loss."

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- (a) airborne volcanic blast or airborne shock waves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical "loss" to the described property.

e. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) foundations, walls, floors or paved surfaces;
  - (b) basements, whether paved or not; or
  - (c) doors, windows or other openings.

But if "loss" by fire, explosion, theft or sprinkler leakage results, we will pay for that resulting "loss."

2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss
- b. Dishonest acts by:
  - (1) you, your employees or authorized representatives; or
  - (2) anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) anyone entrusted with the property (except a carrier for hire).

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or whether or not such acts occur during the hours of employment.

- c. Any repairing, restoration or retouching of the Covered Property.
- 3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss."
  - a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the "loss."
  - b. Wear and tear, any quality in the property that causes it to damage or destroy itself, pollution damage, gradual deterioration; insects, vermin or rodents.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. DEDUCTIBLE

We will pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance.

#### E. ADDITIONAL CONDITIONS

##### 1. Valuation

General Condition E. Valuation in the Commercial Inland Marine Conditions is replaced by the following:

- a. The agreed value of each item of property that is individually listed and described in the Declarations is the applicable Limit of Insurance shown in the Declarations for that item. In the event of total loss we will pay the applicable Limit of Insurance (less deductible) for that item.
- b. The value of all other Covered Property, including newly acquired property, will be the least of the following amounts:
  - (1) the acquisition cost of that property;
  - (2) the market value of that property;
  - (3) the amount for which you are liable, if the property of another;
  - (4) the cost of reasonably restoring that property to its condition immediately before "loss"; or
  - (5) the cost of replacing that property with substantially identical property.In the event of "loss," the value of property will be determined as of the time of "loss."
- 2. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:
  - a. Coverage Territory

We cover property wherever located within:

(1) the United States of America;

(2) Canada

**b. Coinsurance**

All items that are covered but not individually listed and described must be insured for their total value as of the time of "loss" or you will incur a penalty. The penalty is that we will pay only the proportion of any "loss" to these items that the Limit of Insurance shown in the Declarations for them bears to their total value as of the time of "loss."

**c. Packing and Unpacking**

You agree that Covered Property will be packed and unpacked by competent packers.

**d. Pair or Sets**

Loss Condition G Pair, Sets or Parts in the Commercial Inland Marine Conditions is replaced by the following:

(1) In case of total "loss" of any items that are part of a pair or set that is individually listed and described in the Declarations, we will pay the full Limit of Insurance shown in the Declarations for that pair or set. You will surrender to us the remaining items of the pair or set

(2) In case of "loss" to any part of a pair or set that is not individually listed and described in the Declarations, we may:

(a) repair or replace any part to restore the pair or set to its value before the "loss";  
or

(b) pay the difference between the value of the pair or set before and after the "loss"

**e. Salvage**

Upon payment of a total "loss" to scheduled property, we are entitled to any salvage recovery.

**F. DEFINITIONS**

"Loss" means accidental loss or damage.

COMMERCIAL PROPERTY  
CP 00 40 06 95

## LEGAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F. - DEFINITION

### A. COVERAGE

We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage, including loss of use, to Covered Property caused by accident and arising out of any Covered Cause of Loss. We will have the right and duty to defend any "suit" seeking those damages. However, we have no duty to defend you against a "suit" seeking damages for direct physical loss or damage to which this insurance does not apply. We may investigate and settle any claim or "suit" at our discretion. But:

(1) The amount we will pay for damages is limited as described in Section C. Limits of Insurance; and

(2) Our right and duty to defend end when we have used up the Limit of Insurance in the payment of judgments or settlements.

#### 1. Covered Property

Covered Property, as used in this Coverage Form, means tangible property of others in your care, custody or control that is described in the Declarations or on the Legal Liability Coverage Schedule.

#### 2. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

#### 3. Additional Coverage

**Supplementary Payments.** We will pay, with respect to any claim or any "suit" against you we defend:

- All expenses we incur.
- The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
- All reasonable expenses incurred by you at our request, including actual loss of earnings up to \$100 a day because of time off from work.

d. All costs taxed against you in the "suit".

e. Prejudgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

#### 4. Coverage Extensions

a. **Additional Insureds.** If the Named Insured shown in the Declarations is a partnership or corporation, throughout this Coverage Form, the words "you" and "your" include partners, executive officers, trustees, directors and stockholders of such partnership or corporation, but only with respect to their duties as such.

b. **Newly Acquired Organizations.** Throughout this Coverage Form, the words "you" and "your" also include any organization (other than a partnership or joint venture) you newly acquire or form and over which you maintain ownership or majority interest if there is no other similar insurance available to that organization.

This Coverage Extension ends:

- 90 days after you acquire or form the organization; or
- At the end of the policy period shown in the Declarations;

whichever is earlier.

This Extension does not apply to direct physical loss or damage that occurred before you acquired or formed the organization.

**c. Newly Acquired Property**

- (1) You may extend the insurance that applies to Covered Property, as used in this Coverage Form, to apply to your liability for tangible property of others that comes under your care, custody or control after the beginning of the current policy period. This Extension is subject to the following:

(a) All terms and Conditions of this Coverage Form.

(b) Buildings must be intended for:

(i) Similar use as the building described in the Declarations or on the Legal Liability Coverage Schedule; or

(ii) Use as a warehouse.

The most we will pay as the result of any one accident for loss or damage to the total of all buildings covered under this Extension is \$250,000 at each building.

(c) Personal property must be at a location:

(i) That you own; or

(ii) That is or comes under your care, custody or control;

other than at fairs or exhibitions.

The most we will pay as the result of any one accident for loss or damage to the total of all personal property covered under this Extension is \$100,000 at each building.

(2) Insurance under this Extension for each item of property of others will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after the property has come under your care, custody or control; or

(c) You report values to us.

We will charge you additional premium for values reported from the date the property comes under your care, custody or control.

This Extension does not apply to direct physical loss or damage that occurred before the property came under your care, custody or control.

**B. EXCLUSIONS AND LIMITATIONS**

See applicable Causes of Loss Form as shown in the Declarations.

**C. LIMITS OF INSURANCE**

The most we will pay in damages as the result of any one accident is the applicable Limit of Insurance shown on the Legal Liability Coverage Schedule, or in the Declarations.

Payments under the Additional Coverage and the Newly Acquired Property Coverage Extension are in addition to the Limits of Insurance.

The existence of one or more:

1. Additional Insureds, or

2. Newly Acquired Organizations,

does not increase the Limit of Insurance.

**D. LOSS CONDITIONS**

The following conditions apply in addition to the Commercial Property Conditions:

**1. Duties In The Event Of Accident, Claim Or Suit**

a. You must see to it that we are notified promptly of any accident that may result in a claim. Notice should include:

(1) How, when and where the accident took place; and

(2) The names and addresses of any witnesses.

Notice of an accident is not notice of a claim.

b. If a claim is made or "suit" is brought against you, you must see to it that we receive prompt written notice of the claim or "suit".

c. You must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to you because of damage to which this insurance may also apply.

- d. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

**2. Legal Action Against Us**

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative.

**3. Other Insurance**

You may have other insurance covering the same loss as the insurance under this Coverage Form. If you do, we will pay our share of the covered loss. Our share is the proportion that the Limit of Insurance under this Coverage Form covering such loss bears to the Limits of Insurance of all insurance covering the loss.

**4. Transfer Of Rights Of Recovery Against Others To Us**

If you have rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them

**E. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions.

**1. Amendment Of Commercial Property Conditions**

None of the Commercial Property Conditions apply to this Coverage Form, except:

- a. Condition A., Concealment, Misrepresentation or Fraud;
- b. Condition C., Insurance Under Two or More Coverages; and
- c. Condition E., Liberalization.

**2. Bankruptcy**

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Coverage Form.

**3. Policy Period, Coverage Territory**

Under this Coverage Form:

- a. We will pay for loss or damage caused by an accident that occurs:
- (1) During the policy period shown in the Declarations; and
- (2) Within the coverage territory
- b. The coverage territory is:
- (1) The United States of America;
- (2) Puerto Rico; and
- (3) Canada.

**4. Separation Of Insureds**

The insurance under this Coverage Form applies separately to you and each additional insured, except with respect to the Limits of Insurance.

**F. DEFINITION**

"Suit" includes an arbitration proceeding to which you must submit or submit with our consent.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL COVERED PROPERTY**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
STANDARD PROPERTY POLICY  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY FORM

The following is withdrawn from PROPERTY NOT COVERED if an ("X") is shown in parentheses in the Schedule below:

**SCHEDULE\***

	Prem. No.	Bldg. No.	Description of Property
( )			The cost of excavations, grading, backfilling or filling
(X)	ALL	ALL	Foundations of buildings, structures, machinery or boilers if their foundations are below: (1) The lowest basement floor; or (2) The surface of the ground, if there is no basement.
( )			Underground pipes, flues, or drains
(X)	ALL	ALL	Pillings, piers, wharves or docks
( )			Fences outside of buildings
( )			Retaining walls that are not part of the building
( )			Bridges, roadways, walks, patios or other paved surfaces
( )			Vehicles or self-propelled machines (including aircraft or watercraft) that: (1) Are licensed for use on public roads; (2) Are operated principally away from the described premises; or
			This paragraph does not apply to: (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse; (b) Vehicles or self-propelled machines, other than autos, you hold for sale; or (c) Rowboats or canoes out of water at the described premises;
( )			Animals
( )			Underground pipes, including underground tanks and connections. But underground flues and drains are not covered.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

CM 78 68 (Ed. 07 99)

<b>NAMED INSURED:</b> Fraternal Property Management Association		<b>POLICY PERIOD:</b> 04/01/2004 to 04/01/2005	
Insurance under Time Element Coverage applies to only those Coverages shown by ( X ) below.			
<b>COVERAGES</b>			
(X) 1. "Soft Costs"			
(X) a. Interest on money borrowed to finance construction (including costs which directly result from renegotiation of construction loan(s)),			
(X) b. Advertising and promotional expenses.			
(X) c. Realty taxes and other assessments; license and percent fees.			
(X) d. Architectural or Engineering Supervisory or consulting fees.			
(X) e. Costs resulting from the renegotiation of your lease(s).			
( ) f.			
(X) 2. "Rental Value"			
<b>LIMIT OF INSURANCE:</b>			
The most we will pay for your amount of loss under this endorsement is:			
1. \$100,000	for "Soft Costs"		
2. \$ 50,000	for "Rental Value"		
<b>DEDUCTIBLE:</b> (X) \$2,500 ( ) days			

( ) All jobsites described in the Builders Risk Plus Declarations

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(X) The following jobsite only: A location while under construction or reconstruction that is listed on the statement of values on file with Hobbs group/Kirklin & Company, LLC at 12231 Emmet Street, Suite 5, Omaha, NE 68164 .

Words and phrases that appear in quotation marks have special meaning. Refer to Section F., DEFINITIONS, of this endorsement and of your Builders Risk Plus Coverage Form.

The following terms and conditions apply, in addition to all terms and conditions (except the Coinsurance, and Deductible provisions) of your Builders Risk Plus Coverage Form.

## COVERAGE

### 1. "Soft Costs"

When indicated by an "X" in the applicable parentheses of your Time Element Coverage Supplemental Declarations, we will pay your "soft costs" during the "period of delay in completion." Such "soft costs" must result from "loss" from a Covered Cause of Loss which delays the completion of the "project" beyond the "planned completion date."

Our payment for your "soft costs" is subject to the terms and conditions of this endorsement. Also, the amount we pay for items b., d., or f. (shown in the Supplemental Declarations) won't be more than your actual expense for each of these items prior to the "loss."

### 2. "Rental Value"

When indicated by an "X" in the applicable parentheses of your Time Element Coverage Supplemental Declarations, we will pay the amount by which your "rental value" is actually reduced during the "period of delay in completion." Such reduction in "rental value" must result from "loss" from Covered Cause of Loss which delays the completion of the "project" beyond the "planned completion date."

But if your Builders Risk Plus policy was endorsed to permit occupancy and the building or structure was occupied for its intended purpose at the time of "loss," we will pay the amount by which your "rental value" is actually reduced during the "post-loss period of construction."

### 3. Additional Coverages

#### a. Expense to Reduce the "Loss Amount"

We will pay the necessary expense you incur during the "post-loss period of construction" if you would not have incurred such expense had there not been "loss" from any of the Covered Causes of Loss which delayed the completion of the "project" beyond the "planned completion date." But we will not pay more for your expense than the amount by which such expense reduces the "loss amount" we would have otherwise paid under this endorsement.

b. Civil Authority

We will pay the "loss amount" incurred by you during the first two consecutive weeks after the "planned completion date" when a civil authority prohibits access to your "jobsite." The denied access must result from "loss" by a Covered Cause of Loss to property at a location other than the jobsite described in your Time Element Coverage Supplemental Declarations.

**A. EXCLUSIONS**

We will not pay for the "loss amount" that is directly or indirectly due to an increase in the "post-loss period of construction" caused by any of the following. Such "loss amount" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the following:

1. Interference by strikers or other persons affecting the:
  - a. construction or repair of the Covered Property; or
  - b. operation or use of the "project" if your Builders Risk Plus policy is endorsed to permit occupancy, and the building or structure was occupied for its intended purpose at the time of "loss."
2. Irregularities in production, shipment or transportation of any property to be used in the construction or repair of the Covered Property.
3. Suspension, lapse or cancellation of any lease, permit, license, contract or order.
4. Breach of contract, late or noncompliance with orders or penalties of any nature.
5. Weather conditions.
6. Deficiencies in the original construction designs, specifications or materials.
7. Enforcement of any law that:
  - a. regulates the construction, use or repair, or requires the tearing down of any property;
  - b. requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of "pollutants."
8. Lack of funds or lack of work force.

**B. LIMITS OF INSURANCE**

The most we will pay for the "loss amount" incurred by you is the Limit of Insurance shown in the Time Element Coverage Supplemental Declarations.

Any payment made under this endorsement is in addition to the applicable Limits of Insurance shown elsewhere in this policy.

### C. DEDUCTIBLE

We will pay the amount of the adjusted "loss" in excess of the Deductible amounts shown in the Declarations, up to the applicable Limit of Insurance.

This deductible does not apply to insurance afforded under Section A 4., Additional Coverages.

### D. ADDITIONAL CONDITIONS

#### 1. Your Duties in the Event of "Loss"

You must do the following in the event of "loss" to Covered Property:

- a. Make every effort to meet the "planned completion date." This includes, but is not limited to:

- (1) resumption of, as soon as possible, all or any part of the construction or repair;
- (2) use of any machinery, equipment, supplies or materials that could reduce the "period of delay in completion"; and

- (3) resumption of, as soon as possible, the operation or use of any part of the "project," if your Builders Risk Plus policy states that permission to occupy is granted, and the building or structure was occupied for its intended purpose at the time of "loss."

If you do not make every effort to meet the "planned completion date," or you do not resume the operation or use of any part of the "project" as soon as possible, we will only pay the "loss amount" that we would have otherwise paid if you had complied with the above conditions.

- b. Notify us of any payment you receive from others due to a delay in the completion of construction beyond the "planned completion date."

#### 2. Determining the "Loss Amount"

The "loss amount" will be determined based on:

- a. your actual and anticipated costs for the project had "loss" from any of the Covered Causes of Loss not occurred;
- b. Either:
- (1) your likely "rental value" during the "period of delay in completion" had "loss" from any of the Covered Causes of Loss not occurred; or
  - (2) your likely "rental value" during the "post-loss period of construction" had "loss" from any of the Covered Causes of Loss not occurred, if your Builders Risk Plus policy states that permission to occupy is granted, and the building was occupied for its intended purpose at the time of "loss."

- c. your actual "rental value" before "loss" from any of the Covered Causes of Loss occurred, if your Builders' Risk Plus policy states that permission to occupy is granted, and the building was occupied for its intended purpose at the time of "loss";
- d. other relevant sources of information that you must provide including, but not limited to:
  - (1) your financial records and accounting procedures;
  - (2) bills, invoices and other vouchers; and
  - (3) deeds, liens and contracts.
- e. any amounts by which the "loss amount" is reduced due to your failure to perform Your Duties in the Event of Loss outlined in this policy.

### 3. Liquidated Damages

If the construction contract for the "project" contains a clause that requires payments to you because of a delay in the completion of the "project" beyond the "planned completion date," we will subtract the amount due from others, whether you have collected it or not, from the "amount of loss" we would have otherwise paid.

## E. DEFINITIONS

**"Loss Amount"** means the sum of your actual "soft costs" or "rental value," as covered by this endorsement.

**"Period of delay in completion"** means the period of time that:

- a. begins with the "planned completion date"; and
- b. ends on the date when the "project" should be completed using reasonable speed and similar materials and workmanship.

**"Planned completion date"** means the date the "project" would be put into operation or use in the normal course of construction if "loss" from any of the Covered Causes of Loss had not occurred.

**"Post-loss period of construction"** means the period of time that:

- a. begins with the date of the "loss" by any Covered Cause of Loss; and
- b. ends on the date the "project" should be completed using reasonable speed and similar materials and workmanship.

**"Project"** means the total construction of all Covered Property at the jobsite or described in the Time Element Supplemental Declarations.

"Rental value" means the sum of:

- a. the total rental income from the tenant occupancy of the completed "project," as furnished and equipped by you;
- b. the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be your obligations; and
- c. the fair rental value of any portion of the completed "project" which would have been occupied by you.

But Rental Value does not include normal operating expenses which are discontinued as a result of a "loss."

"Soft costs" means your actual and necessary costs in excess of your actual and anticipated amount for the "project" consisting only of the following for which an "X" appears in the applicable parentheses of your Time Element Coverage Supplemental Declarations:

- a. interest on money borrowed to finance construction of the Covered Property (including costs which directly result from renegotiation of construction loan(s) e.g. Loan commitment fees, including prepaid interest and points);
- b. advertising and promotional expenses;
- c. realty taxes and other assessments, license and permit fees;
- d. architectural or engineering supervisory or consulting fees;
- e. costs resulting from renegotiating your lease(s) including:
  - (1) legal, accounting and administration fees;
  - (2) commissions.
- f. other as specified in the Time Element Coverage Supplemental Declarations.

Other Terms Remain The Same



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.

HURRICANE DEDUCTIBLE FORM

This endorsement modifies insurance provided under the Select Business Policy coverage part.

The deductible for loss or damage in any occurrence as respects "hurricane" are:

SCHEDULE

<u>Loc. No(s).</u>	<u>Bldg. No(s).</u>	<u>Deductible</u>
All property in first tier counties from Texas to Virginia		\$10,000

The following is added to the deductible section as respects loss or damage caused by "Hurricane"

A. "Hurricane" is defined as:

1. To be a windstorm that :

a) Has sustained wind speed in excess of 74 miles per hour;

or

b) Has been declared by the National Weather Service to be a hurricane, typhoon or tropical cyclone.

AND

2. To include the time period:

a) 72 hours prior to becoming a hurricane, typhoon or tropical cyclone

and

b) for the entire duration of the hurricane, typhoon or tropical cyclone

and

c) the 72 hours immediately following the downgrading of a hurricane, typhoon or tropical cyclone as declared by the National Weather Service.

Information required to complete this schedule on this endorsement will be shown in the declarations.

COMMERCIAL INLAND MARINE  
CM 00 01 09 00**COMMERCIAL INLAND MARINE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms:

**LOSS CONDITIONS****A. Abandonment**

There can be no abandonment of any property to us.

**B. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**C. Duties In The Event Of Loss**

You must see that the following are done in the event of loss or damage to Covered Property:

1. Notify the police if a law may have been broken.
2. Give us prompt notice of the loss or damage. Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the loss or damage occurred.
4. Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
5. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

7. We may examine any Insured under oath, while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this Insurance or the claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.
8. Send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
9. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit.
10. Cooperate with us in the investigation or settlement of the claim.

**D. Insurance Under Two Or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**E. Loss Payment**

1. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
2. We will not pay you more than your financial interest in the Covered Property.
3. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

5. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss if you have complied with all the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of the loss; or
- b. An appraisal award has been made.

6. We will not be liable for any part of a loss that has been paid or made good by others.

#### F. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### G. Pair, Sets Or Parts

##### 1. Pair Or Set

In case of loss or damage to any part of a pair or set we may:

- a. Repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. Pay the difference between the value of the pair or set before and after the loss or damage.

##### 2. Parts

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

#### H. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### I. Reinstatement Of Limit After Loss

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

#### J. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance; or
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you

This will not restrict your insurance.

#### GENERAL CONDITIONS

##### A. Concealment, Misrepresentation Or Fraud

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part

##### B. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

##### C. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the direct loss or damage.

**D. No Benefit To Bailee**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**E. Policy Period**

We cover loss or damage commencing:

1. During the policy period shown in the Declarations; and
2. Within the coverage territory.

**F. Valuation**

The value of property will be the least of the following amounts:

1. The actual cash value of that property;

2. The cost of reasonably restoring that property to its condition immediately before loss or damage; or

3. The cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.

FLOOD COVERAGE ENDORSEMENT

Your policy is amended as follows:

A. COVERAGE

1. Covered Causes Of Loss include:

a. Flood

Flood means a general and temporary condition of partial or complete inundation of normally dry land area from inland or tidal waters.

b. Surface Water & Mudslide

(1) Surface water means the unusual and rapid accumulation of water above the ground surface.

(2) Mudslide includes mudflow caused by surface water and is similar to a river of liquid and flowing mud on the surface of normally dry land area.

c. Tsunami

Tsunami means a large wave caused by earthquake or volcanic eruption.

d. Release of water impounded by a dam.

2. Limit of Insurance

(Is shown only if it is different from the limit(s) for other Covered Causes of Loss). The most we will pay for water damage from a Covered Cause in any one "loss" is the lesser of the limit shown below or the limit in the Declarations.

Sublimits Premises Location

\$5,000,000

\$

\$

\$10,000 On business personal property at any other location not specifically identified above.

\$5,000,000 In any one policy year.

3. Deductible: See Declarations Page for appropriate deductible based upon applicable flood zone.

Deductible: As respects your claim for "loss" to Covered Property caused by perils listed in paragraph 1. above, we will pay the amount of the adjusted "loss" in excess of the applicable deductible, or National Flood Insurance Program policy with limit equal to or greater than applicable policy deductible, up to the applicable Limit of insurance. This deductible applies per occurrence/per location.

## B. EXCLUSIONS

1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Governmental Action

Seizure or destruction of property by order of governmental authority.

b. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

c. War and Military Action

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(2) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

2. Under this extension of coverage, we will not pay for "loss" caused by or resulting from:

a. Water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks on or into Covered Property (This does not include backup of sewers or drains which is a covered cause of loss under this policy).

c. Landslide

d. The failure of power or other utility service supplied to a covered location, however caused, if the failure occurs away from the covered location.

Special Exclusions: If your policy covers time element loss (such as loss of income, rental value, or extra expense). We will not pay for:

a. Any loss caused by or resulting from:

(1) damage or destruction of "finished stock"; or

(2) the time required to reproduce "finished stock."

This exclusion does not apply to extra expense coverage.

b. Any increase of loss caused by or resulting from:

(1) delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(2) suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your business income during the "period of restoration."

c. Any extra expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

d. Any other consequential loss.

Other Terms Remain The Same



RSUI Group, Inc.  
945 East Paces Ferry Rd.  
Suite 1890  
Atlanta, GA 30326

CM 76 61 (Ed. 11 99)

THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.  
EARTHQUAKE COVERAGE ENDORSEMENT

Your policy is amended as follows:

A. COVERAGE

1. Covered Causes Of Loss include:

- a. Earthquake.
- b. Volcanic Eruption, meaning the eruption, explosion, or effusion of a volcano.
- c. Landslide

All Earthquake shocks, Volcanic Eruptions or Landslides that occur within any 168 hour period will constitute a single Earthquake, Volcanic Eruption or Landslide. The expiration of this policy will not reduce the 168 hour period.

2. Limit of Insurance

(is shown only if it is different from the limit(s) for other Covered Causes of Loss). The most we will pay for loss caused by an Earthquake or Volcanic Eruption is the lesser of the limit shown below or the limit in the Declarations.

Sublimits      Premises Location

\$5,000,000.

\$

\$100,000 On property at any other location not specifically identified above.

\$5,000,000 In any one policy year.

3. Deductible

\$25,000 (If different from deductible or shown on the Declarations page) for all property in all states except California.

Percentage Deductible. 5% of the value of the Covered Property at the location(s) where the loss or damage occurs, but not less than \$25,000 for all property in the state of California.

Deductible: As respects your claim for "loss" to Covered Property caused by Earthquake, Volcanic Eruption or Landslide, we will pay the amount of the assessed "loss" in excess of the applicable deductible up to the applicable Limit of Insurance. The applicable deductible applies per occurrence/per location.

## B. EXCLUSIONS

1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
  - a. Governmental Action  
Seizure or destruction of property by order of governmental authority.
  - b. Nuclear Hazard  
Nuclear reaction or radiation, or radioactive contamination, however caused.
  - c. War and Military Action
    - (1) war, including undeclared or civil war;
    - (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
    - (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.
2. Under this extension of coverage, we will not pay for "loss" caused by or resulting from:
  - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.
  - b. Fire, explosion (other than volcanic explosion), tidal wave, tsunami, flood, surface water, water which backs up through sewers or drains, water below the surface of the ground (including that which flows, leaks or seeps on or into Covered Property), mudslide or mudflow, release of water impounded by a dam, even if attributable to an Earthquake, Volcanic Eruption or Landslide.
  - c. Any Earthquake, Volcanic Eruption or Landslide that begins before the inception of this insurance.
  - d. Earth movement other than Earthquake, such as landslide or earth sinking, rising or shifting. But if loss or damage by another Covered Cause of Loss results, we will pay for that resulting loss.
  - e. The cost to remove volcanic ash, dust or particulate matter that does not cause direct physical loss to Covered Property.

f. Utility Service Failure

The failure of power or other utility service supplied to a covered location, however caused, if the failure occurs away from the covered locations.

3. Special Exclusions: If your policy covers time element loss (such as loss of income, rental value, or extra expense).

We will not pay for:

(a) Any loss caused by or resulting from:

- (1) damage or destruction of "finished stock"; or
- (2) the time required to reproduce "finished stock."

This exclusion does not apply to extra expense coverage.

(b) Any increase of loss caused by or resulting from:

- (1) delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
- (2) suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your business income during the "period of restoration."

(c) Any extra expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

(d) Any other consequential loss.

Other Terms Remain The Same

COMMERCIAL INLAND MARINE  
CM 00 66 06 95

## ACCOUNTS RECEIVABLE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section E -- DEFINITIONS.

### A. COVERAGE

#### 1. We will pay:

- a. All amounts due from your customers that you are unable to collect;
- b. Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- c. Collection expenses in excess of your normal collection expenses that are made necessary by the "loss"; and
- d. Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from Covered Causes of Loss to your records of accounts receivable

#### 2. PROPERTY NOT COVERED

Coverage does not apply to:

- a. Records of accounts receivable in storage away from the "premises" shown in the Declarations; or
- b. Contraband, or property in the course of illegal transportation or trade.

#### 3. COVERED CAUSES OF LOSS

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL "LOSS" to your records of accounts receivable except those causes of "loss" listed in the Exclusions.

#### 4. ADDITIONAL COVERAGE -- COLLAPSE

We will pay for direct "loss" caused by or resulting from risks of direct physical "loss" involving collapse of all or part of a building or structure caused by one or more of the following:

- a. Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; all only as Insured against in this Coverage Form;

#### b. Hidden decay;

#### c. Hidden insect or vermin damage;

#### d. Weight of people or personal property;

#### e. Weight of rain that collects on a roof;

#### f. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form

### 5. COVERAGE EXTENSION

#### Removal

If you give us written notice within 10 days of removal of your records of accounts receivable because of imminent danger of "loss", we will pay for "loss" while they are:

- a. At a safe place away from your "premises"; or

- b. Being taken to and returned from that place.

This Coverage Extension is included within the Limit of Insurance applicable to the "premises" from which the records of accounts receivable are removed.

### B. EXCLUSIONS

1. We will not pay for "loss" caused directly or indirectly by any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

#### a. GOVERNMENTAL ACTION

Seizure or destruction of property by order of governmental authority.

But we will pay for "loss" caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. NUCLEAR HAZARD**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

**c. WAR AND MILITARY ACTION**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**2. We will not pay for a "loss" caused by or resulting from any of the following:**

- a. Delay, loss of use, loss of market or any other consequential loss.
- b. Dishonest or criminal act committed by:
  - (1) You, any of your partners, employees, directors, trustees, or authorized representatives;
  - (2) Anyone else with an interest in the property, or their employees or authorized representatives; or
  - (3) Anyone else to whom the property is entrusted for any purpose.

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. But theft by employees is not covered.

- c. Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of money, securities or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding

- d. Bookkeeping, accounting or billing errors or omissions.
- e. Electrical or magnetic injury, disturbance or erasure of electronic recordings that is caused by or results from:
  - (1) Programming errors or faulty machine instructions;
  - (2) Faulty installation or maintenance of data processing equipment or component parts;
  - (3) An occurrence that took place more than 100 feet from your "premises"; or
  - (4) Interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place more than 100 feet from your "premises".

But we will pay for direct "loss" caused by lightning.

- f. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- g. Unauthorized instructions to transfer property to any person or to any place
3. We will not pay for "loss" that requires any audit of records or any inventory computation to prove its factual existence.
4. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss".
  - a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the "loss"
  - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
  - c. Faulty, inadequate or defective:
    - (1) Planning, zoning, development, surveying, siting;
    - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property wherever located.

d. Collapse except as provided in the Additional Coverage - Collapse section of this Coverage Form.

#### C. LIMITS OF INSURANCE

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. ADDITIONAL CONDITIONS

##### 1. DETERMINATION OF RECEIVABLES

General Condition E Valuation in the Commercial Inland Marine Conditions is replaced by the following:

a. If you cannot accurately establish the amount of accounts receivable outstanding as of the time of "loss", the following method will be used:

(1) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the "loss" occurs; and

(2) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the "loss" occurred or for any demonstrated variance from the average for that month

b. The following will be deducted from the total amount of accounts receivable, however that amount is established:

(1) The amount of the accounts for which there is no "loss";

(2) The amount of the accounts that you are able to re-establish or collect;

(3) An amount to allow for probable bad debts that you are normally unable to collect; and

(4) All unearned interest and service charges.

#### 2. RECOVERIES

The following is added to Commercial Inland Marine Loss Condition I. Recoveries:

You will pay us the amount of all recoveries you receive for a "loss" paid by us. But any recoveries in excess of the amount we have paid belong to you

3. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### a. COVERAGE TERRITORY

We cover records of accounts receivable:

(1) Within your "premises"; and

(2) Away from your "premises" while in transit or within premises of others if those premises are located or the transit is within:

(a) The United States of America;

(b) Puerto Rico; and

(c) Canada.

##### b. COINSURANCE

All accounts receivable, except those in transit, must be insured for at least 80% of their total value as of the time of "loss" or you will incur a penalty.

The penalty is that we will pay only the proportion of any "loss" that the Limit of Insurance shown in the Declarations for Coverage Applicable at All Locations bears to 80% of the total value of all accounts receivable at all locations as of the time of "loss". This penalty will not apply to records of accounts receivable in transit, interest charges, excess collection expenses or expenses to re-establish your records of accounts receivable.

##### c. PROTECTION OF RECORDS

Whenever you are not open for business, and except while you are actually using the records, you must keep all records of accounts receivable in receptacles that are described in the Declarations.

#### E. DEFINITIONS

1. "Loss" means accidental loss or damage.

2. "Premises" means that interior portion of the building at the address shown in the Declarations that you occupy for your business.

COMMERCIAL INLAND MARINE  
CM 00 67 09 00

## VALUABLE PAPERS AND RECORDS COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F – Definitions.

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.

1. Covered Property, as used in this Coverage Form, means "valuable papers and records" that are your property or property of others in your care, custody or control.

#### 2. Property Not Covered

Covered Property does not include:

- a. Property not specifically declared and described in the Declarations if such property cannot be replaced with other property of like kind and quality;
- b. Property held as samples or for delivery after sale;
- c. Property in storage away from the "premises" shown in the Declarations; or
- d. Contraband, or property in the course of illegal transportation or trade.

#### 3. Covered Causes Of Loss

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE to Covered Property except those causes of loss listed in the Exclusions.

### 4. Additional Coverage – Collapse

We will pay for direct loss or damage caused by or resulting from risks of direct physical loss or damage involving collapse of all or part of a building or structure caused by one or more of the following:

- a. Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; earthquake; all only as insured against in this Coverage Form;
- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;
- f. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Additional Coverage does not increase the Limits of Insurance provided in this Coverage Form.

### 5. Coverage Extensions

#### a. Removal

If you give us written notice within 10 days of removal of your "valuable papers and records" because of imminent danger of loss or damage, we will pay for loss or damage while it is:

- (1) At a safe place away from your "premises"; or
- (2) Being taken to and returned from that place.

This Coverage Extension is included within the Limits of Insurance applicable to the "premises" from which the Covered Property is removed.

**b. Away From Your Premises**

We will pay up to \$5,000 for loss or damage to Covered Property while it is away from your "premises".

But if a higher Limit of Insurance is specified in the Declarations, the higher limit will apply.

The limit for this Coverage Extension is additional insurance

**B. Exclusions**

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But if nuclear reaction or radiation, or radioactive contamination results in fire, we will pay for the direct loss or damage caused by that fire if the fire would be covered under this Coverage Form.

**c. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

Exclusions B.1.a. through B.1.c. apply whether or not the loss event results in widespread damage or affects a substantial area

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss.

- b. Dishonest or criminal act committed by:

- (1) You, any of your partners, employees, directors, trustees, or authorized representatives;
- (2) A manager or a member if you are a limited liability company;
- (3) Anyone else with an interest in the property, or their employees or authorized representatives; or
- (4) Anyone else to whom the property is entrusted for any purpose

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. But theft by employees is not covered.

- c. Errors or omissions in processing or copying

But we will pay for direct loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this Coverage Form.

- d. Electrical or magnetic injury, disturbance or erasure of electronic recordings.

But we will pay for direct loss or damage caused by lightning.

- e. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- f. Unauthorized instructions to transfer property to any person or to any place

- g. Neglect of an Insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather Conditions But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
    - of part or all of any property wherever located.
- d. Collapse except as provided in the Additional Coverage -- Collapse Section of this Coverage Form.
- e. Wear and tear, any quality in the property that causes it to damage or destroy itself, gradual deterioration; insects, vermin or rodents

#### C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

#### D. Deductible

We will not pay for loss or damage in any one occurrence until the amount of the adjusted loss or damage before applying the applicable Limits of Insurance exceeds the Deductible shown in the Declarations. We will then pay the amount of the adjusted loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

#### E. Additional Conditions

##### 1. Valuation -- Specifically Declared Items

The following is added to General Condition F. Valuation in the Commercial Inland Marine Conditions:

The value of each item of property that is specifically declared and described in the Declarations is the applicable Limit of Insurance shown in the Declarations for that item.

#### 2. Recoveries

The following is added to Loss Condition H. Recovered Property in the Commercial Inland Marine Conditions:

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. If so, your loss or damage will be readjusted based on the amount you received for the property recovered, with allowance for recovery expenses incurred.

3. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

##### a. Coverage Territory

We cover property:

- (1) Within your "premises"; and
- (2) Away from your "premises" while in transit or within premises of others if those premises are located or the transit is within:
  - (a) The United States of America (including its territories and possessions);
  - (b) Puerto Rico; and
  - (c) Canada.

##### b. Protection Of Records

Whenever you are not open for business, and except while you are actually using the property, you must keep all "valuable papers and records" in receptacles that are described in the Declarations.

#### F. Definitions

1. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings, films, maps or mortgages.

But "valuable papers and records" does not mean "money" or "securities", converted data, programs or instructions used in your data processing operations, including the materials on which the data is recorded.

2. "Premises" means that interior portion of the building at the address shown in the Declarations that you occupy for your business.

3. "Money" means:

- a. Currency, coins and bank notes whether or not in current use; and
- b. Travelers checks, register checks and money orders held for sale to the public.

4. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

a. Tokens, tickets, revenue and other stamps whether or not in current use; and

b. Evidences of debt issued in connection with credit or charge cards, which cards are not of your own issue;

but does not include "money".



RSUI Group, Inc  
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IL 09 03

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNs, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Illinois counties of;		As per schedule on file.	
	Bond	Marion		
	Bureau	Marshall		
	Christian	Menard		
	Clinton	Mercer		
	Douglas	Montgomery		
	Franklin	Peoria		
	Fulton	Perry		
	Gallatin	Putnam		
	Grundy	Randolph		
	Jackson	Rock Island		
	Jefferson	St. Clair		
	Knox	Saline		
	LaSalle	Sangamon		
	Logan	Tazewell		
	McDonough	Vermilion		
	Macoupin	Washington		
	Madison	Williamson		
			Total	

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INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ILLINOIS CHANGES – MINE SUBSIDENCE

This endorsement modifies Insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

#### A. Coverage

Section A. is replaced by the following:

##### A. Mine Subsidence Coverage

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

##### 1. Covered Property

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Piling and piers;
- d. Underground pipes, flues and drains.

##### 2. Property Not Covered

Covered Property does not include:

- a. Land; or
- b. Personal Property.

#### 3. Covered Cause Of Loss

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

#### 4. Additional Coverage

##### DEBRIS REMOVAL

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence

#### B. Exclusions

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

##### EARTH MOVEMENT

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

#### C. Limits Of Insurance

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;

- a. Less than \$250; or
- b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Indiana counties of;		As per schedule on file.	
	Clay	Owen		
	Crawford	Parke		
	Daviess	Perry		
	Dubois	Pike		
	Fountain	Posey		
	Gibson	Putnam		
	Greene	Spencer		
	Knox	Sullivan		
	Lawrence	Vanderburgh		
	Martin	Vermillion		
	Monroe	Vigo		
	Montgomery	Warren		
	Orange	Warrick		

Total

INTERLINE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **INDIANA CHANGES – MINE SUBSIDENCE**

This endorsement modifies Insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

### **A. Coverage**

Section A. is replaced by the following:

#### **A. Mine Subsidence Coverage**

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

##### **1. Covered Property**

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Piling and piers;
- d. Underground pipes, flues and drains.

##### **2. Property Not Covered**

Covered Property does not include:

- a. Land; or
- b. Personal Property.

### **3. Covered Cause Of Loss**

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

### **4. Additional Coverage**

#### **DEBRIS REMOVAL**

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence.

### **B. Exclusions**

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

#### **EARTH MOVEMENT**

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part

### **C. Limits Of Insurance**

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies.

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND  
HOUSEHOLD PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES  
COVERAGE FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium Included
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the Kentucky counties of;		As per schedule on file.	
	Bell	Johnson		
	Boyd	Knott		
	Breathitt	Knox		
	Butler	Lawrence		
	Carter	Lee		
	Christian	Leslie		
	Clay	Martin		
	Daviess	McCreary		
	Edmonson	McLean		
	Elliott	Morgan		
	Floyd	Muhlenberg		
	Greenup	Ohio		
	Hancock	Perry		
	Harlan	Union		
	Henderson	Webster		
	Hopkins	Whitley		
	Jackson	Wolfe		

Total

INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**KENTUCKY CHANGES – MINE SUBSIDENCE**

This endorsement modifies Insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

**A. Coverage**

Section A. is replaced by the following:

**A. Mine Subsidence Coverage**

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

**1. Covered Property**

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

- Structures, meaning buildings or fixtures permanently attached to real estate, including:
  - a. The cost of excavation, grading, backfilling or filling;
  - b. Foundations of building, machinery or boilers if their foundations are below:
    - (1) The lowest basement floor; or
    - (2) The surface of the ground, if there is no basement;
  - c. Piling and piers;
  - d. Underground pipes, flues and drains.

**2. Property Not Covered**

Covered Property does not include:

- a. Land; or
- b. Personal Property.

**3. Covered Cause Of Loss**

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

**4. Additional Coverage****DEBRIS REMOVAL**

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence.

**B. Exclusions**

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

**EARTH MOVEMENT**

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting.

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

**C. Limits Of Insurance**

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies.

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.



RSUI, Inc.  
945 East Paces Ferry Rd  
Suite 1890  
Atlanta, GA 30326

IL 09 03 (E)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
MINE SUBSIDENCE SCHEDULE**

This endorsement provides supplementary information to be used with one or more of the following as shown in the Schedule:

BUSINESSOWNERS PROPERTY COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
FARM PROPERTY - FARM DWELLINGS, APPURTENANT STRUCTURES AND HOUSEHOLD  
PERSONAL PROPERTY COVERAGE FORM  
FARM PROPERTY - BARNS, OUTBUILDINGS AND OTHER FARM STRUCTURES COVERAGE  
FORM  
SELECT BUSINESS POLICY - BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Mine Subsidence Coverage applies to the following Structure(s) as described in the endorsement providing such coverage:

**SCHEDULE**

Coverage Part Or Coverage Form	Prem. No.	Bldg. No.	Limit of Insurance	Additional Premium
<b>SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM</b>	All covered structures in the West Virginia counties of;		As per schedule on file.	Included
	Barbour	Mercer		
	Boone	Mineral		
	Braxton	Mingo		
	Brooke	Monongalia		
	Clay	Nicholas		
	Doddridge	Ohio		
	Fayette	Pocahontas		
	Glimmer	Preston		
	Grant	Pulnam		
	Greenbrier	Raleigh		
	Hancock	Randolph		
	Harrison	Summers		
	Kanawha	Taylor		
	Lewis	Tucker		
	Lincoln	Tyler		
	Logan	Upshur		
	Marlon	Wayne		
	Marshall	Webster		
	Mason	Wetzel		
	McDowell	Wyoming		
			Total	

INTERLINE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WEST VIRGINIA CHANGES – MINE SUBSIDENCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

The Coverage Form to which this endorsement applies is extended to insure against direct loss by Mine Subsidence.

**A. Coverage**

Section A. is replaced by the following:

**A. Mine Subsidence Coverage**

We will pay for direct physical loss of or damage to Structures at the premises described in the Mine Subsidence Schedule or in the Declarations caused by or resulting from Mine Subsidence.

**1. Covered Property**

Covered Property, as used in this endorsement, means the following type of property for which a Limit of Insurance is shown in the Mine Subsidence Schedule or Declarations:

Structures, meaning buildings or fixtures permanently attached to real estate, including:

- a. The cost of excavation, grading, backfilling or filling;
- b. Foundations of building, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- c. Pillings and pliers;
- d. Underground pipes, flues and drains.

**2. Property Not Covered**

Covered Property does not include:

- a. Land; or
- b. Personal Property.

**3. Covered Cause Of Loss**

Mine Subsidence means the collapse of underground coal mines resulting in direct damage to a Structure. It does not include loss caused by:

- a. Earthquake or earth movement, landslide, water seepage or volcanic eruption; or
- b. Collapse of storm or sewer drains.

**4. Additional Coverage****DEBRIS REMOVAL**

We will pay your expense to remove debris of Covered Property caused by or resulting from Mine Subsidence

**B. Exclusions**

The first sentence of the Earth Movement exclusion applicable to the Coverage Form to which this endorsement applies is replaced by the following:

**EARTH MOVEMENT**

Any earth movement such as an earthquake, landslide, or earth sinking, rising or shifting

This exclusion does not apply to direct loss caused by Mine Subsidence as covered under this Coverage Part.

**C. Limits Of Insurance**

Section C. is replaced by the following:

The most we will pay for loss or damage to any one Structure caused by mine subsidence in any one occurrence, including debris removal, is the Limit of Insurance for Mine Subsidence shown in the Mine Subsidence Schedule or in the Declarations. However, this limit will be reduced by the amount of loss payment which is due from the Mine Subsidence Insurance Fund but which we cannot collect from the Mine Subsidence Fund.

**D. Deductible**

Section D. is replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds 2% of the Limit of Insurance. But this amount will not be;
  - a. Less than \$250; or
  - b. More than \$500.

We will then pay the amount of loss or damage in excess of the amount determined above up to the applicable Limit of Insurance.

2. This section applies separately to each Structure to which this endorsement applies

**E. Additional Conditions**

The Coinsurance Additional Condition does not apply to this endorsement.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **ASBESTOS EXCLUSION**

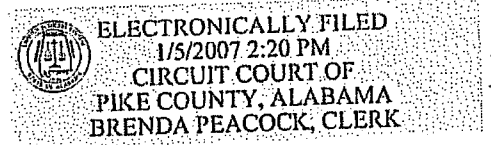
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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

This policy does not apply to any loss, demand, claim or suit arising out of or related in any way to asbestos or asbestos-containing materials.

The company shall have no duty of any kind with respects to any such loss, demand, claim or suit.



IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE & METRA HUGHES, d/b/a  
HISTORICAL RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC. and TROY RHOADES; HILB,  
ROGAL & HOBBS WHOLESALE  
INSURANCE SERVICES, INC.;  
KIRKLIN & CO., LLC, a/k/a  
HRH/KIRKLIN & CO., LLC and  
RSUI GROUP, INC.

Defendants.

CIVIL ACTION NUMBER:  
CV 06-246-RWB

**HRH/KIRKLIN AND COMPANY, L.L.C.**  
**ANSWER TO PLAINTIFFS' COMPLAINT AND AMENDED**  
**COMPLAINT**

COME NOW HRH/Kirklin and Company, L.L.C., ("HRH"), and  
responds to Plaintiffs' Complaint and Amended Complaint as follows:

**STATEMENT OF THE PARTIES**

1. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.
2. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.
3. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

4. Denied.

5. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

6. Denied.

7. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

COUNT 1

8. No response required.

9. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

10. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

11. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

12. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

13. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

14. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

15. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and therefore it is denied.

**COUNT 2**

16. No response required.

17. Denied.

18. Denied.

19. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 3**

20. No response required.

21. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

22. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 4**

23. No response required.

24. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

25. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

26. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

27. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

**COUNT 5**

28. No response required.

29. For lack of information, this defendant can neither admit or deny the averments of this paragraph, and it is therefore denied.

30. Denied.

31. Denied.

32. Denied.

**AFFIRMATIVE DEFENSES**

1. This Defendant avers Plaintiffs' complaint fails to state claims for which relief can be granted and demands strict proof thereof.

2. This Defendant avers Plaintiffs' claims are barred by the applicable statutes of limitations.

3. This Defendant avers Plaintiffs' claims are barred by contributory negligence and/or assumption of the risk.

4. This Defendant avers superseding and/or intervening causes, including, but not limited to, a failure of Plaintiffs to perform under the terms of its

contract.

5. There is no causal connection or relationship between any alleged negligence, fraud and breach of contract on the part of HRH and the Plaintiffs' alleged damages.

6. This Defendant pleads that it is not guilty of the matters and things alleged in Plaintiffs' complaint and demands strict proof thereof.

7. This Defendant pleads failure to mitigate damages.

8. This Defendant pleads waiver.

9. This Defendant pleads claims are barred by the loss of privity as between HRH and Donnie and Metra Hughes, d/b/a Historical Rentals, Inc.

10. This Defendant pleads accord and satisfaction.

11. This Defendant reserves its rights to amend its answer until all discovery has been completed.

/s/ Tom Burgess  
Tom Burgess (BUR011)  
Attorney for HRH/Kirklin & Co., L.L.C.

**OF COUNSEL:**

Burgess & Hale, L.L.C.  
505 North 20th Street, Suite 300  
Birmingham, Alabama 35203  
Telephone (205) 715-4466; Fax; (205) 715-4454

**CERTIFICATE OF SERVICE**

I hereby certify that on **January 5, 2007** I have served a copy of the above and foregoing on counsel for all parties by:

\_\_\_\_\_ Facsimile transmission;

\_\_\_\_\_ Hand delivery;

\_\_\_\_\_ Placing a copy of same in the United States Mail, properly addressed and first class postage prepaid to:

✓  
\_\_\_\_\_ Using the CM/ECF system which will send notification of such to the following:

N. J. Cervera, Esq.  
Matthew Baker, Esq.  
Cervera, Ralph & Reeves, LLC  
914 South Brundidge Street  
Troy, Alabama 36081  
(334) 566-0116

James S. Lloyd, Esq.  
Karen D. Farley, Esq.  
Taylor, Gray & Whitehead, P.C.  
2501 Twentieth Place North, Ste. 300  
Birmingham, Alabama 35203  
(205) 967-8822/ Fax: 967-2389

Juan C. Ortego, Esq.  
Alford, Clausen & McDonald  
Suite 5000 St. Louis Center  
Mobile, Alabama 36608  
(251) 432-1600/Fax: (251) 432-1700

\_\_\_\_\_  
/s/ Tom Burgess  
OF COUNSEL

IN THE CIRCUIT COURT OF PIKE COUNTY, ALABAMA

DONNIE HUGHES and METRA  
HUGHES, d/b/a HISTORICAL  
RENTALS, INC.,

Plaintiffs,

v.

GAB ROBINS NORTH AMERICA,  
INC., et al.,

Defendants.

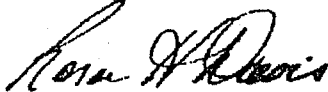
CASE NO. CV-2006-246-RWB

ACCEPTANCE AND WAIVER

TROY KING, Attorney General of the State of Alabama, acknowledges service of the Notice of Constitutional Challenge in the above-styled cause pursuant to §6-6-227 Code of Alabama, 1975 (Attached). The Attorney General, having filed this Acceptance and Waiver in this action, hereby waives any further service upon him of any pleadings, discovery and other matters filed in this cause and presently waives the right to be heard.

Respectfully submitted,

TROY KING, KIN047  
ATTORNEY GENERAL



ROSA H. DAVIS, DAV043  
ASSISTANT ATTORNEY GENERAL



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 19<sup>th</sup> day of January, 2007, served a copy of the foregoing  
by first-class United States Mail, postage prepaid and addressed upon the following:

Helen Johnson Alford, Esquire  
Juan C. Ortega, Esquire  
Alford, Clausen & McDonald, L.L.C.  
One St. Louis Centre, Suite 5000  
Mobile, Alabama 36602

N.J. Cervera, Esquire  
Matthew Baker, Esquire  
Cervera, Ralph & Reeves, L.L.C.  
914 South Brundidge Street  
Troy, Alabama 36081

James S. Lloyd, Esquire  
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2501 Twentieth Place North, Suite 300  
Birmingham, Alabama 35223

Tom Burgess, Esquire  
Burgess & Hale, L.L.C.  
505 North 20<sup>th</sup> Street, Suite 300  
Birmingham, Alabama 35203



ROSA H. DAVIS, DAV043  
ASSISTANT ATTORNEY GENERAL

**ADDRESS OF COUNSEL:**

Office of the Attorney General  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130-0152  
334-242-7300  
334-353-8235 (Fax)



**§6-6-227. Persons to be made parties; rights of persons not parties.**

All persons shall be made parties, who have, or claim, any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party and shall be entitled to be heard; and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard. (Act 1935, No 355, p. 777; Code 1940, T.7, § 166 )

